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90-1448

No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

HERBERT C. SAVAGE

Petitioner,

vs.

TRAMMELL CROW COMPANY, INC.
AND
HERITAGE SECURITY SERVICES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF THE STATE OF
CALIFORNIA
FOURTH DISTRICT, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

HERBERT C. SAVAGE in pro. per.
for Petitioner
Post Office Box 126982
San Diego, California 92112
(Telephone: None)

QUESTIONS PRESENTED

The opinion of the court below certified for publication, orders that The Gospel of The Lord Jesus Christ, like commercial handbills for a pizza parlor, is barred from distribution in parking lots open to the public in conflict with decisions of other California courts, and the Ninth Circuit Court of Appeals for The Federal Circuit, which rule that parking lots open to the public are to be open to union activity, prisioner union activity, and distribution of Hare Krishna literature, where there is no evidence of interference.

1. May Gospel tract distribution be barred from parking lots open to the public when others are not denied that First Amendment right?

2. May the court in the instant case bar First Amendment rights with no evidence of interference?

The Vatican is a state by Consular and Diplomatic treaties in force cited *infra*. The Court of Appeal ruled that the Roman Catholic judge in the instant case was biased in dismissing this case without leave to amend; but did not recognize the Vatican as a state, a political body, for purposes of disqualification of the biased judge.

3. May the California courts invoke a religious exemption under California Code of Civil Procedure section 170.2(a) to deny recusal and rehearing before an impartial judge, when the alleged "religious group" is a foreign state, a political body?

4. Do the United States treaties in force cited *infra*, require recognition of the "Holy See" as a political body, a state?

5. Which prevails over the other, California Code of Civil Procedure section 170.2(a), or Article VI of the United States Constitution?

LIST OF PARTIES

Respondents, Defendants,

Trammell Crow Company, Inc.
Ron Nelson, Partner

Heritage Security Services, Inc.
Lawrence Richman, President

CIGNA Corporation, a Delaware corporation & Connecticut General Life Insurance Company (corporation) owners of the Del Norte Shopping Center which is managed by Trammell Crow Company, Inc.

Heritage Security Services is employed by Trammell Crow Company, Inc. at the Del Norte Shopping Center.

Trammell Crow Company, Inc. and Heritage Security Services, Inc. are respondents before this court.

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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1990

HERBERT C. SAVAGE
Petitioner,
vs.
TRAMMELL CROW COMPANY, INC.
and
HERITAGE SECURITY SERVICES, INC.
Respondents.

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Herbert C. Savage, respectfully petitions the Supreme Court of The United States that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals of the State of California, Fourth District, Division One, entered in the above entitled proceeding September 24, 1990, modified October 17, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth district is published at 223 Cal.App.3d 1568, and is reprinted in the Appendix A hereto, pp. A-1 to A-20.

The modified opinion (not yet published) includes the denial of petitions for rehearing and is reprinted in the Appendix B hereto, pp. B-1 to B-3 (Modified opinion did not change the judgment, per letter reprinted in the Appendix C hereto.)

The denial of the Petition for Review and denial of requests for depublication by the Supreme Court of California *en banc* is not yet published, and is reprinted in the Appendix D hereto.

The judgment of the Superior Court of California, County of San Diego, North County Judicial District, has not been reported. It is reprinted in the Appendix F hereto.

Order regarding re-hearing filed by Robert J. O'Neill, judge of the Superior Court is reprinted in Appendix G hereto.

JURISDICTION

Invoking federal jurisdiction under the First Amendment to the United State Constitution, Petitioner brought this suit in the Superior Court of California, County of San Diego, for injunctive relief to distribute The Gospel of The Lord Jesus Christ. On July 26, 1989, Petitioner's motion for rehearing before an impartial judge, was denied. On August 16, 1989, the order sustaining defense demurrer without leave to amend and dismissing the complaint in its entirety, was entered by the trial court judge, as a judgment.

The judgment of the Court of Appeal of California, Fourth Appellate District, Division One, was entered on September 24, 1990, reversing the trial court's judgment, but affirming the denial of injunctive relief and denial of rehearing before an impartial judge. The Court of Appeal denied a timely petition for rehearing in the modified opinion filed on October 17, 1990. Petitioner invoked Article VI of the United States Constitution in briefs filed in the Court of Appeal and in the Supreme Court of California. Thereafter on December 13, 1990, the Supreme Court of California denied a timely petition for review, and requests for depublication.

The jurisdiction of this court to review the judgment of the Court of Appeals, Fourth Appellate District, Division One, is invoked under 28 USC § 1257 (a).

STATUES, RULES, AND TREATIES INVOLVED

Pertinent portions of Articles III and VI of the United States Constitution, the First, Fifth, and Fourteenth Amendments to the United States Constitution, Title 28 U.S.C. §1257 (a) & §2403 (b), United States Supreme Court Rule

29.4(c), United States treaties in force: (Vienna Convention on Consular Relations, 21 UST 77 (1963) Art. 2 § 1, and Art. 55,(TIAS 6820)) (Vienna Convention on Diplomatic Relations, 23 UST 3229 (1961) Art. 2, and Art. 41 (TIAS 7502)), California Constitution Article I sections 2,3,4, California Civil Code § 52.1 (a), California Code of Civil Procedure §170.2, and California Code of Judicial Conduct Canon 2.C are printed as Appendix H hereto.

STATEMENT OF THE CASE

The case centers around the free distribution of The Gospel of The Lord Jesus Christ in the Del Norte Shopping Center parking lot in Escondido, California. See Gospel tract, Appendix J hereto, containing 22 Scriptures in old English from The *Reformation* 1611 King James Bible.

On May 25, 1989, Petitioner was stopped while quietly and peacably, in a non-interfering manner, distributing Gospel tracts alone in the shopping center parking lot by a uniformed, armed security guard and ordered under color of law, to remove all Gospel tracts from vehicles in the parking lot.

Petitioner claimed First Amendment rights.The security guard claimed private property rights. (See Declaration attached to EX PARTE APPLICATION filed June 2, 1989 in Superior Court).

The tracts were not removed. Instead, Petitioner, *ex parte,* filed suit in the Superior Court of California, North San Diego County, for a temporary restraining order and preliminary injunction, with a complaint and points and authorities invoking the United States Constitution, and the First Amendment to the United States Constitution.

The respondents, Trammell, et. al., argued that the only speech activity allowed in the shopping center is political petitioning by their shopping center tenant rules, and no "handbilling" (equating The Gospel of The Lord Jesus Christ to handbills for a pizza parlor, see declaration of Ron Burns

in trial court) is permitted in the parking lot, especially The Gospel of The Lord Jesus Christ.

Trammell claimed private property rights under the Fifth and Fourteenth Amendments to the United States Constitution.

Roman Catholic judge, Robert J. O'Neill, concurred with Trammell's arguments, and ordered denial of injunctive relief, stating that [there is to be no] "religious proselytising or promoting or distribution of religious materials on private property, even though it is open to the public..." [and that *only* political petitioning is permitted]. (See transcript of oral argument in trial court).

Immediately following oral argument, Judge O'Neill made known to Petitioner that he is Roman Catholic.

Trammell filed a demurrer claiming there was no cause of action. Petitioner filed a motion with the court for rehearing before an impartial judge.

Judge O'Neill himself, denied the petition for rehearing before an impartial judge. The judge granted Trammell's demurrer, and by his own motion, Judge O'Neill ordered the case dismissed in its entirety, without leave to amend.

On appeal, Petitioner invoked the First and Fourteenth Amendments to the United States Constitution, and argued that the judge had abused his discretion by speech content discrimination, and that he was partial (biased).

The speech content was The word of God from The Reformation 1611 King James Bible, banned by the Vatican.

Trammell's arguments included speech content (ie: *that The Gospel of The Lord Jesus Christ is not political* (sic), see Appendix B hereto p. B-2 fn 1), ***potential*** *interference* and ***potential*** *littering* in the parking area, and stated that these were reasons for the ban on distributing Gospel tracts in the parking lot.

Trammell's defense against *Robins v. Pruneyard* 23 Cal.3d 899, 153 Cal.Rptr. 854, 592 P.2d 341 (1979) followed

by *Pruneyard v. Robins* 477 U.S. 74 (1980) argued that these two cases "carved out a narrow exception" to *Lloyd v. Tanner* 407 U.S. 551 (1972) to allow political petitioning *ONLY* in California shopping centers and barred any other speech activity, and that all other cases invoked by Petitioner were "inapposite". The Court of Appeal in Part II of the decision, found otherwise.

The following Court of Appeal decision was certified for publication.

A. Decision Part I: Affirming Denial Of Injunctive Relief

The Court of Appeal's decision Part I Appendix A hereto pp. A-5 to A-12, asserted that "time, place, and manner" allowed the government action to bar speech activity in the parking lot, based on *potential interference* and *potential littering* and therefore the barring of Gospel tracts, or commercial handbill distribution (not at issue), in the parking lot was justified because it is "content neutral". The court relied on numerous selected federal cases.

B. Decision Part II: Reversing Judgment

In Part II of the decision Appendix A hereto pp. A-12 to A-20, the Court of Appeal reversed the trial court's judgment of dismissal on the basis of the First Amendment exclusion of governmental regulation of religious belief, Appendix A hereto p. A-18, and on speech content discrimination. The court stated:

> [A]lthough the state may not be required by the [United States] Constitution to provide a forum for the exercise of free speech rights, when it does provide such a forum, as California clearly has, it may not restrict use of the forum on the basis of the religious content of a speaker's message. (See Appendix A hereto p. A-18.)

The court further stated that the trial court abused its discretion:

> Since the record demonstrates the defendants' policy was to prohibit all religious activity at the center, it follows Savage could allege a cause of action against them. Thus the trial court abused its discretion in sustaining the defendants' demurrer without leave to amend. (See Appendix A hereto p. A-19)

C. Decision Part III
Denial Of Rehearing Affirmed

The Court of Appeals invoked California Code of Civil Procedure §170.2 (a) and read it to mean that Judge O'Neill, as a Roman Catholic, could not recuse himself and allow rehearing before an impartial judge. Appendix A hereto pp. A-19 to A-20.

[Per United States Supreme Court Rule 29.4(c) it is hereby noted that 28 U.S.C. § 2403(b) may be applicable].

D. Petition For Rehearing

Both Petitioner and Trammell filed timely petitions for rehearing before the Court of Appeal. Petitioner's argument that Article VI, of the United States Constitution is ruling law in this case was denied. See Appendix B hereto p. B-3, and see Petitioner's Petition for Rehearing on Parts I and III of decision.

E. Petition For Review:
Supreme Court Of California

Petitioner filed a timely Petition for Review to the Supreme Court of California for review of Part I and Part III of the decision of the Court of Appeal, and requested depublication of Parts I and III of the decision.

Trammell's reply requested review of Part II, and depublication.

The California Supreme Court denied the Petition for Review and denied the requests for depublication. Justices Mosk and Broussard were of the opinion that the Petition for Review should have been granted. Appendix D, hereto.

REASONS FOR GRANTING THE WRIT

"This is a faithful saying, and worthy of all acceptation, That Christ Jesus came into the world to save sinners;"

Reformation 1611 King James Bible
I Timothy 1:15(a)

Scripture from Gospel tract reprinted in Appendix J hereto and is Exhibit A in briefs below, now *selectively* barred by California law from distribution in parking lots open to the public.

This court should grant certiorari in this case. This conflicting decision on First Amendment speech activities in parking lots open to the public, not only conflicts internally with California State court decisions, but with federal court appeals decisions and United States Supreme Court decisions.

The Court of Appeal below, ignored the United States Constitution and *relevant* decisions of this court in barring rehearing before an impartial judge, as well as barring distribution of God's word in parking lots, while recognizing the right of others to carry out speech activities in parking lots open to the public.

I

CALIFORNIA'S COURTS, AND NINTH CIRCUIT COURT OF APPEALS, MAY NOT CHOOSE ONE RELIGIOUS ORGANIZATION, OR LABOR UNION, OR EVEN OTHERS, TO BE ALLOWED SPEECH RIGHTS IN PARKING LOTS OPEN TO THE PUBLIC, THEN BAR

ANOTHER'S SPEECH RIGHTS IN THE SAME FORUMS.

But that is *exactly* what the Court of Appeals did, in Part I of the decision, Appendix A hereto pp. A-5 to A-12, claiming that time, place and manner, *potential* interference, and alternative forum precludes distribution of The word of God in parking lots, open to free speech for others.

When Constitutional, First Amendment free speech is selectively barred from a forum, this court must exercise *strict scrutiny* on such "content neutral" (sic) decisions.

A. The Government's Choice Of Religions: the Ninth Circuit Orders Distribution Of Hare Krishna Literature In Parking Lots Open To The Public. Part I Of The Decision In The Instant Case Bars The Distribution Of The Gospel Of The Lord Jesus Christ From Parking Lots Open To The Public.

Carreras v. City of Anaheim 768 F.2d 1039 (9th C.A. 1985) cross appealed from a federal district court which barred the International Society for Krishna Consciousness of Laguna Beach (ISKCON) from distribution of religious literature and soliciting donations in *parking areas* and pedestrian walkways outside the Anaheim Stadium, but allowed ISKON'S distribution of literature and solicitations on the exterior walkways of the Anaheim Convention Center. The lower court decision upheld a city ordinance which prohibited the ISKCON distribution of literature and soliciting in the parking areas and walkways. (768 F.2d at 1041, 1042)

The Ninth Circuit *reversed* the decision of the district court *which barred distribution of literature and solicitation in the parking areas* and walkways of the stadium, and affirmed the decision allowing speech activities and solicitation on convention center walkways.

The ruling of the Ninth Circuit exhibits that court's familiarity with relevant California free speech decisions

regarding speech activity in parking lots, and *pertinent* United States Supreme Court rulings.

> [5] Thus, for the purposes of the California Liberty of Speech Clause, the "public forum" doctrine is not limited to traditional public forums such as streets, sidewalks, and parks or to sites dedicated to communicative activity such as municipal theaters. *Rather, the test under California law is whether the communicative activity "is basically incompatible with the normal activity of a particular place at a particular time."* Id. at 939, 185 Cal.Rptr. at 639; see also *Univeristy of California Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laboratory*, 154 Cal.App. 3d 1157, 1164-65, 201 Cal. Rptr. 837, 843-44 (Cal. Ct.App. 1984)
>
> In the case before us, the exterior walkways and *parking areas of Anaheim Stadium and the Anaheim Convention Center are much like the parking lot* at Soledad prison considered in *Prisoners Union.* At all three locations, the public is free to come and go; at the stadium and convention center, the public travels over the *parking lot* and walkways to attend sporting events or exhibitions and, at Soledad, the public uses the *parking lot* while visiting the prison. *The purposes of the three locations are very similar—the facilitation of parking and the free flow of pedestrian and vehicular traffic. Under California law as articulated in Prisoners Union, such locations must be open to expressive activity unless the activity is basically incompatible with the primary use of the facility.* We conclude that solicitation by ISKCON is not incompatible with the intended uses of either the exterior areas [*parking areas*, see above] of the stadium or the exterior walkways of the convention center. (768 F.2d at 1045) (italics added)

The Ninth Circuit ruled that the *parking lot* of the City of Anaheim Stadium was open to the public and *open to distribution of religious literature* by ISKCON.

The *restriction* of distribution of religious literature on *walkways only* around the convention center, was reversed; the court made clear that First Amendment activities in a privately owned facility open to the public is no different than a city owned facility:

> Under California law, however, even a *privately owned* facility that is open to the public is subject to the requirements of the public forum doctrine. *See Robins v. Pruneyard Shopping Center*, 23 Cal.3d at 908, 592, P.2d at 346, 153 Cal.Rptr. at 859 (1979), **aff'd, 447 U.S. 74**, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980). (768 F.2d at 1045, fn 11) (emphasis added).

As the Ninth Circuit noted, the United States Supreme Court in *Pruneyard v. Robins* 447 U.S. 74, at 88 (1980) affirmed that decision of the California Supreme Court, *Robins v. Pruneyard.*

In *Pruneyard v. Robins* 447 U.S.74 (1980) The U.S. Supreme Court, with reference to *Lloyd v. Tanner* 407 U.S. 551 (1972) stated:

> [7] Our reasoning in LLoyd, however, does not ex proprio vigore limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution. Cooper v. California, 386 US 58, 62 17 L Ed 2d 730, 87, S Ct 788 (1967). See also 407 US, at 569-570, 33 L Ed 2d 131, 92 S Ct 2219. IN LLOYD, SUPRA, THERE WAS NO STATE CONSTITUTIONAL OR STATUTORY PROVISION THAT HAD BEEN CONSTRUED TO CREATE RIGHTS TO THE USE OF PRIVATE PROPERTY BY STRANGERS, COMPARABLE TO THOSE FOUND TO EXIST BY THE

CALIFORNIA SUPREME COURT HERE (emphasis added) (447 US 81)

Carreras, supra, (768 F.2d 1039, 9 C.A. 1985) recognizes this distinction, whereas the Court of Appeals decision overlooks this distinction in the multiplicity of citations dealing with "time, place, and manner" in (Appendix A hereto p.A-9, *Heffron v. International Society for Krishna Consciousness* 452 US 640, 653-654 (1981) and numerous cites from other states, not individually dealt with here.

B. The Government's Choice Of Religions: California Courts Order Distribution Of Sociological Literature In Parking Lots Open To The Public And Bar Distribution Of The Gospel Of The Lord Jesus Christ.

Prisoner's Union v. California Department of Corrections 135 Cal.App. 3d 930, 185 Cal. Rptr. 634 (1982) cited in *Carreras* above, involved distribution of sociological Prisioner's Union literature in the prison *parking lot,* which is open to the public. Prison officials banned the distribution of literature in the *parking lot.* The Prisoner's Union sought declaratory and injunctive relief. The Superior Court denied that relief. The Court of Appeal reversed and held:

> We hold that such activity is protected by the federal and state Constitutions, and that it cannot be banned *absent a showing* that such activity would pose an overriding threat to prison security, or to another similar state interest. Since we find *no such showing* on this record, we conclude that appellants are entitled to the relief which they seek. (135 Cal.App.3d 930, 932, 185 Cal. Rptr. 634, 635) (italics added)

In *University of California Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laboratory,* 154 Cal. App. 3d 1157, 201 Cal.Rptr. 837 (1984) cited in *Carreras,* the issue was whether to allow expressive activity inside the

auditorium or restrict it to the *parking lot* (already permitted by the laboratory):

> In February of 1979 the Project requested permission to place literature and to give periodic slideshows in the Visitors Center at the Laboratory, to which the public has virtually unrestricted access. This request was refused, and the Laboratory offered instead to allow the project to distribute literature in the *parking area* next to the Visitors Center." (Id., 154 Cal.App. 3d 1161, 201 Cal.Rptr. 841) (Italics added)

The Superior Court granted the anti-nuclear group injunctive relief to allow use of the auditorium.

Appeal by the Laboratory followed.

The Appellate Court looked to *Robins, Hoffman, Prisoners Union*, and the much cited *Grayned* and stated:

> [10] **This court has therefore adopted the "basic incompatibility test"**. (*Id.* , 154 Cal.App. 3d 1164, 201 Cal.Rptr. 843) (emphasis added)

Injunctive relief was affirmed for expressive activities in the auditorium, with Justice Scott dissenting in part and concurring in part:

> [I] would conclude that appellant's decision to allow leafletting in the *parking lot,* but not in the center itself, **WAS REASONABLE**. (*Id.*, 154 Cal.App.3d 1175, 201 Cal. Rptr. 851) (emphasis added)

The alternative channel, [alternate forum], the *parking lot,* which was stated as "reasonable" by Justice Scott, was *not* the answer as held by affirming the preliminary injunction, premised on the "BASIC INCOMPATIBILITY TEST". ***The Parking lot passed*** **the test**, and so did the auditorium.

Injunctive relief affirmed

C. The Government's Choice Of Religions: the Basic Incompatibility Test; No Showing Of Interference; And Misuse Of Time, Place And Manner Argument By The Court Of Appeal.

There must be proof of *actual*, real interference, a *showing* of interference before First Amendment rights of free speech may be denied, or ordered to "go some where else."

> *ULTIMATELY*, THE ANSWER DEPENDS UPON WHETHER THE *MANNER* OF EXPRESSION IS BASICALLY INCOMPATIBLE WITH THE NORMAL ACTIVITY OF A PARTICLUAR *PLACE* AT A PARTICULAR *TIME*. [emphasis added] *Prisoners Union* (*supra*) citing *Grayned v. City of Rockford* 408 US 104, 116, 117 (1972)

This basic principle articulated in *Grayned* is cited as the basis of the reasoning in *Prisoners Union* (135 Cal.App.3d at 940, 185 Cal.Rptr. at 639, in *Nuclear Weapons Lab* (154 Cal. App.3d 1157, 1164-65, 201 Cal.Rptr. 837 834-44), and in particular in *Carreras* (768 F.2d at 1044). The principle emanated from *Grayned*. There cannot be "what if" reasoning. There must be an *actual* showing of interference.

> SINCE THERE WAS NO SHOWING OF INTERFERENCE, THAT COURT FOUND IT "IMMATERIAL THAT ANOTHER FORUM, EQUALLY EFFECTIVE, MAY HAVE BEEN AVAILABLE TO PETITIONERS". *(Prisoners Union)(Supra) 185 Cal. Rptr. 639, In re Hoffman (Supra) 64 Cal.Rptr. 97 at 101, fn 7. [emphasis added]*

In order that the appeallant be barred from distributing Gospel tracts in the Del Norte Shopping Center Parking Lot:

> SOME INTERFERENCE, HOWEVER, MUST BE SHOWN.(In re *Hoffman* 67 C.2d 845, 852, fn 6,

64 Cal Rptr. 97, 101 fn 6 (1967) [emphasis added] (*Hoffman* involved distribution of anti-Vietnam leaflets in a **privately** owned railroad depot in Los Angeles).

The trial courts and the Court of Appeal were both challenged to show any factual evidence in the record that Petitioner's quiet, peacable, noninterfering distribution of The Gospel of The Lord Jesus Christ interfered with the use of the parking lot. There is none.

The Court of Appeal ignored *Grayned, Carreras*, and other of the Petitioner's *numerous* cites from California courts that are *based on Grayned*, and instead went to *Ward v. Rock Against Racism*___US___, 109 S.Ct. 2746, 2753-2754 (1989), the issue, loud music disturbing local residents in New York who lived adjacent to a public park; to find a "time, place, and manner" rationale for making quiet, peacable, non-interfering distribution of The word of God illegal! A number of other far fetched (i.e.: irrelevant) cases are cited. Federal cases and cases in California courts cited by Petitioner were ignored which require *proof*, not conjecture, of interference before barring peacable, noninterfering free speech in parking lots open to the public.

There must be "sufficient evidence" before speech rights or any other rights, can be taken away by the courts. This is not only articulated in *Carreras, Hoffman, and Grayned*, but this principle pervades judicial reasoning extant: *Jacobellis v. State of Ohio* 378 US 184, at 187 (1964) "speech rights": *Thompson v. City of Louisville* 362 US 199 at 205, 206, (1960) criminal conviction without evidence, reversed; *Washington v. United States* 357 US 348 (1958) PER CURIAM, reversal because of insufficiency of the evidence.

In *Sears-Roebuck v. San Diego County Dist. Council of Carpenters* 25 Cal.3d 317, 158 Cal. Rptr. 370 (1979) expressive activity (picketing) occurred in the Sears *parking lot*; (For Reference see *Sears-Roebuck v. San Diego County*

Dist. Council of Carpenters (1976) 17 Cal.3d 893, 896, 132 Cal.Rptr. 443, 446).

In dealing with the peacable picketing at issue, the California Supreme Court stated:

> [R]eference to "conduct that is unlawful" must be limited to conduct which constitutes **BREACH OF THE PEACE, DISORDERLY CONDUCT**, the **BLOCKING OF ACCESS OR EGRESS**, or other **"SIMILAR UNLAWFUL ACTIVITY."** Peaceful picketing on private sidewalks, because it does not involve violence or substantially impair the rights of others, is not conduct "similar' to the listed acts. [11]
>
> [11] Sears argues that trespassory picketing involves a ***POTENTIAL OF VIOLENCE*** *(See Sears Roebuck & Co. v. Carpenters*, supra, 436 U.S. 180, 213 [56 L.Ed.2d 209, 235] conc. opn. of Powell, J.)); and that "acts...likely to produce violence in others" may constitute a breach of the peace (*In re Brown* (1973) 9 Cal.3d 612 [108 Cal.Rptr. 465, 510 P.2d 1017]). This argument appears to be based on the assumption that the employer has and will exercise a right of self-help to eject the pickets. **IF THE PICKETING IS LAWFUL, HOWEVER, THEN THE EMPLOYER HAS NO RIGHT TO EJECT THE PICKETS**; the possibility that it may attempt to do so unlawfully and thereby precipitate violence is no basis for an injunction barring peaceful picketing. (Id., 25 Cal.3d 331, 158 Cal. Rptr. 370, 599 P.2d 676) [emphasis added]

IT MUST BE NOTED HERE THAT THE COURT'S RULING WAS NOT DISPOSITIVE OF PUNISHMENT THAT SHOULD BE DEALT OUT FOR *HYPOTHETICAL*, NOR "POTENTIAL VIOLENCE", NOR FOR ANY OTHER *POTENTIAL* INTERFENCE.

THERE WAS "*NO SHOWING*" OF INTERFERENCE.

The ruling of the California Supreme Court dealt with the *reality* of peacable picketing activity in the shopping center parking lot.

> [W]hether it is on the *main street of the downtown section of the metropolitan area, in a suburban shopping center or in a parking lot, does not make any difference.* Peaceful picketing outside the store, involving neither fraud, violence, breach of the peace, nor interference with access or egress, is not subject to the injunction jurisdiction of the courts." (*Id.*, 25 Cal. 3d 333, 158 Cal.Rptr. at 380) [emphasis added]

The injunction sought by Sears-Roebuck to *PROHIBIT* PEACEABLE PICKETING IN THE SHOPPING CENTER PARKING LOT WAS *DENIED*, AND WOULD EQUALLY BE DENIED FOR AN INJUNCTION AGAINST PEACEABLE PICKETING ACTIVITIES ON MAIN STREET, DOWNTOWN!

Likwise, speech activities cannot be barred because of the minor nuisance of littering by recipients of union literature, Hare Krishna literature, Gospel tracts, sociological literature...on private or public property open to the public. See: *In re Hoffman* 67 Cal.3d. 845, 847, 852, 64 Cal.Rptr. 97, 101, 102 (*supra*), and see "LITTER" U.S.C.A. Const. Amends. 1, 14, where the issue is *actually* raised on *littering* in court decisions. The distinct right to distribute religious literature over commercial literature is well covered in *Murdock v. Pennsylvania* 319 U.S. 105, at 110, 111 (1943)

In *NAACP v. Clairborne Co.* 458 US 886, 933-934 (1982), the Supreme Court made it abundantly clear that an appellate court has an obligation to make an independent examination of the whole record in order to assure that:

> [T]he judgment does not constitute a forbidden intrusion on the field of free expression. (& See *Bose Corp. v. Consumers Union of U.S.* 466 US 485 at 499 (1984)

Further, in *Pruneyard v. Robins* 447 US 74 (1980) this court made clear that the state may not pick and choose between messages:

> There consequently is no danger of governmental discrimination for or against a particular message (447 US 74, at 87)

The Court of Appeals in *Part I* of its decision Appendix A hereto pp. A-6 to A-15 completely bypassed these principles laid down by the United States Supreme Court, and for reasons outlined in *Marsh v. Alabama* 326 U.S. 501, see 509, 510 (1945), Part I should be reversed and remanded.

II

THE GOVERNMENT'S CHOICE OF RELIGIONS: CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.2(A) OVERRULES THE UNITED STATES CONSTITUTION ARTICLE VI, ACCORDING TO THE COURT OF APPEAL, IN THE INSTANT CASE. THAT DECISION IS NOW PUBLISHED AS LAW!

Part III of the Court of Appeal decision, printed at Appendix A hereto, pp. A-19 to A-20, ordered published by the California Supreme Court, See Appendix D hereto; rules that because the trial court judge is Roman Catholic, [an allegiant to a foreign state dictator, the "Holy See",] California Code of Civil Procedure §170.2(a) directs that he should not obey the United States Constitution nor his oath of office to uphold the Constitution of the United States, Article VI; and that the Court of Appeal affirms that he himself, on his own authority, can deny rehearing before an impartial judge involving the distribution of The word of God which does expose the false teachings of his foreign state master! See also Appendix A hereto, p. A-16 fn 3 and all of Petitioner's

briefs in the lower courts on denial of rehearing before an impartial judge.

A. "I TELL YOU, NAY: BUT EXCEPT YE REPENT, YE SHALL ALL LIKEWISE PERISH."

Reformation 1611 King James Bible
Luke 13:3

The above Scripture, in old English, is one of 22 Scriptures quoted at Appendix J hereto which is Exhibit "A" throughout this case in the lower courts, and is easily recognized as coming from The Reformation King James Bible.

The Vatican state, the "Holy See" which is the Roman Catholic institution, has historically fought freedom of speech and freedom to worship The Jesus Christ of The Holy Bible, as opposed to the false christ of the Vatican, for the past fifteen centuries, and in particular the reading and distribution of The 1611 King James Reformation Bible for the past four centuries. So it is quite natural that Roman Catholic judges in the instant case would want to halt freedom to distribute The word of God which exposes the false Catholic dogma, *but readily invoke First Amendment rights for distribution of Hare Krishna literature, sociological or union literature, or picketing, in parking lots open to the public.*

See *Lemon v. Kurtzman* 403 US 602, 629 (1971) and *Evans v. Selma Union High School Dist.* 222 P 801, 802, 803 (1924) where it is made known through court case cites, the animosity of the Vatican towards The Reformation 1611 King James Bible.

A reading of *Fox's Book of Martyrs, The Reformation in England* by J.H. Merle d'Aubigne, or numerous other histories on The Inquisition and The Reformation; and contemporary histories of Ulster (Northern Ireland), and missionary work in Mexico, Salvador, and Colombia, will

bear this fact out more fully. (See documentation at Appendix I hereto.)

B. Catholic Action For Slavery: Mental And Physical

Published before the assassination of Abraham Lincoln:

IF CATHOLICS EVER GAIN A SUFFICIENT NUMERICAL MAJORITY IN THIS COUNTRY, RELIGIOUS FREEDOM IS AT AN END.

SO OUR ENEMIES SAY, SO WE BELIEVE.

(*The Sheperd of the Valley, official journal of the Bishop of St. Louis,* Nov 23, 1851.)

NO MAN HAS A RIGHT TO CHOOSE HIS RELIGION

(*New York Freeman, official journal of Bishop Hughes,* Jan. 26, 1852.)

Published after the assassination of Abraham Lincoln:

THE CHURCH...DOES NOT, AND CANNOT ACCEPT, OR IN ANY DEGREE FAVOR, LIBERTY IN THE PROTESTANT SENSE OF LIBERTY.

(*Catholic World,* April, 1870)

THE CATHOLIC CHURCH IS THE MEDIUM AND CHANNEL THROUGH WHICH THE WILL OF GOD IS EXPRESSED. WHILE THE STATE HAS RIGHTS, SHE HAS THEM ONLY IN VIRTUE AND BY PERMISSION OF THE SUPERIOR AUTHORITY, AND THAT AUTHORITY CAN BE EXPRESSED ONLY THROUGH THE CHURCH.

(*Catholic World,* July, 1870)

PROTESTANTISM HAS NOT, AND NEVER CAN HAVE, ANY RIGHT WHERE CATHOLICITY HAS TRIUMPHED.

(*Catholic Review,* June, 1875)

The fact that the Vatican, and its hierarchy, the bishops and priests in the United States of America, conspired to murder Abraham Lincoln is attested to by (2) authorities: T.M. Harris, late Brigadier-General U.S.V., and Major General by brevet, a member of the commission in the trial of the conspiracy in his book:

Assassination of Lincoln, A History of The Great Conspiracy, which states in the trial of John H. Surratt at page 280:

> Mr. Merrick, however, seized the occasion to pass an eulogium on that church, in which he showed as much disregard for the facts of history as he did for the proven facts in this case. Perhaps he felt this vindication to be called for from the fact that most of the conspirators were Catholics in religion, and the further fact that the friends who waited and watched for the assassination, and who, on his retrun, spirited him away and kept him secreted for five months and then helped him off to Italy, where he was found in the ranks of the Pope's army, and who voluntarily came before the court on his trial to testify, and to procure testimony in his behalf, were priests of that church.

For a second authority see *The Assassination of President Lincoln and Trial of the Conspirators* by Benn Pitman, the court reporter at the trials.

Has the "Holy See" changed its style of "conversion" by murder? See Appendix I hereto, quoting articles attesting to murder of Protestants and burning of Bibles by Catholics today!

Dogmatic Canons & Decrees, Remigius La Fort, D.D., censor, and John Cardinal Farley, Archbishop of New York, Imprimatur (1912), currently in print and current dogma, makes the Vatican position on free speech, The Bible, and church and state very clear!

C. Treaties In Force Between The United States And The Roman Catholic Church, The "Holy See".

See *Americans United For Separation of Church and State v. Reagan* 786 F.2d 194 (3 C.A. 1986), United States *Senate Hearing* 98-586 *nomination of William A. Wilson of California to be Ambassador to the "Holy See"*, February 2, 1984, and treaties with the "Holy See": *Vienna Convention on Diplomatic Relations*, 23 UST 3229 (1961), (TIAS 7502) and *Vienna Convention on Consular Relations*, 21 UST 77 (1963), (TIAS 6820) in which years the United States entered into force *circa* (1972) diplomatic and *circa* (1969) consular treaties with the "Holy See". (Also see *A Guide To The United States Treaties in Force* (1989) by Kavass, Part II, page 187)

> The problem is that the entity formally conducting diplomatic relations and signing treaties is not The State of The Vatican City but The Holy See—ie., the supreme authority of The Catholic Church.
>
> It has been the position of The Holy See that its international personality is based on its religious and spiritual authority and not its territorial enclave in Rome. (See pp. 18, 29, Senate Hearing 98-586 *supra*)

The record of the Senate Hearing is clear that "[F]oreign diplomats are accredited to The Holy See (a religious institution) not a Vatican City", and that "The Vatican is a church clothed in the garb of a state." (See pp. 23, 25 fn 11, Senate Hearing 98-586 *supra*)

The courts have no authority to modify or reinterpret the treaties and diplomatic accords with the state government of The Catholic Institution. The treaties are the "law of the land" as per Article VI of the United States Constitution, binding on both federal and state court judges. See *Americans United For Separation of Church and State v. Reagan* 786 F.2d 194, at 201 & 202 (*supra*) and *Chan v. Korean Air Lines Ltd.* __U.S.__,109 S.Ct. 1676, at 1683 & 1684 (1989)

D. The First Case Law To Be Published On California Code Of Civil Procedure §170.2(a) Overrules The United States Constitution!

Shepard's Citations list no case law citiations for California Code of Civil Procedure §170.2(a). *Shepard's* does list 41 HLJ 697 (March 1990). The *Hasting's Law Journal* states: "[T]here has been a dearth of judicial application and commentary addressing Section 170.2(a)" (41 HLJ at 698) and addresses sodomite applications of Section 170.2(a).

The March 1990 journal cites *State of Idaho v. Freeman* 478 F.Supp. 33 (Idaho 1979), at 41HLJ 701, as a case for arguing the effect of religious leadership on judicial impartiality in terms of federal statutory law, and cites 14 J. Marshall L. Rev. 243 (1980), at 41 HLJ 702 fn 40.

The primary argument in *Idaho v. Freeman* was the Mormon opposition to ERA (Equal Rights Amendment) and the congressional extension of ratification deadline; and the judge being a leader in the mormon church and his church's opposition to the ERA. The judge refused to recuse himself, and no appeal was filed. Title 28 USC 455(a) was the code upon which the argument was based to show the requirement for impartiality. The case presents a weak argument regarding the case at hand, as we are not dealing with an international foreign government in *Idaho v. Freeman.*

E. We Now Have Selective Speech Rights In The United States In Order To Protect The "Rights" Of The "Holy See"

The case at hand deals with a biased judge. The Court of Appeals admits his decision exceeds the bounds of reason, (Decision Part II, Appendix A, p. A-19), but on what is ruled a technicality of California statute law, *the biased judge* can still deny the free speech rights of Petitioner, against the First and Fourteenth Amendments and Article VI of the United States Constitution, and slip behind the California Code of Civil Procedure § 170.2(a) to prevent rehearing before an

impartial judge, because he is Roman Catholic. [an allegiant to the "Holy See", a foreign state dictator]. See decision Part III, Appendix A hereto, pp. A-19 to A-20. What *utter* nonsense! The "*proceeding*" involves the *individual* First Amendment rights of the Petitioner, not the political rights of the "Holy See" or any "*group*".

Article 55

Respect for the laws and regulations of the receiving state

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State. (21 UST 77, 113 *supra*) (identical wording in Article 41, 23 UST 3229, 3247 *supra*)

By Article VI of the United States Constitution, this is the law that the "Holy See" must abide by in the United States.

What is the actual dogma of the "Holy See" that the "faithful" in the United States do abide by?

ON THE SACRAMENT OF ORDER

. . .

Canon VI. If anyone saith that in the Catholic Church there is not a hierarchy by divine ordination instituted, consisting of bishops, priests and ministers; let him be anathema.

Canon VII. If anyone saith that bishops are not superior to priests; or that they have not the power of confirming and ordaining; or that the power which they possess is common to them and to priests; OR **THAT ORDERS, CONFERRED BY THEM, WITHOUT THE CONSENT, or vocation of the people, or OF THE SECULAR POWER, ARE INVALID**; or that those who have neither been

> rightly ordained, nor sent, by ecclesiastical and canonical power, but come from elsewhere, are lawful ministers of the word and of the sacraments; **LET HIM BE ANATHEMA.**
>
> Canon VIII. If anyone saith that the **BISHOPS WHO ARE ASSUMED BY AUTHORITY OF THE ROMAN PONTIFF** are not legitimate and true bishops, but are a human figment; let him be anathema. (emphasis added) (Dogmatic Canons & Decrees pp. 157, 158, *supra*)

The "faithful" are to do what they are told by the priests, bishop, and the "Holy See", their state dictator in Rome.

Judge Robert J. O'Neill did precisely that.

F. The United States Constitution Is The Supreme Law Of The Land And The Judges In Every State Are Bound Thereby Regardless Of State Statutes To The Contrary

A state statute may not be invoked in defiance of United States Constitutionally protected rights. Part III of the opinion places the United States Constitution in second place to the statutes of California.

The United States Constitution Article VI, cl. 3 waives religious tests, but clearly does not waive *political* tests, ie: a test for allegiance to a foreign government. Quite the contrary! Article VI requires allegiance to the *United States* Constitution as The "*Supreme Law of the Land*"! Under the treaties cited above, the Roman Catholic Church ("Holy See") is a political entity operating from headquarters in Rome, a foreign "state". The treaties as voluntarily signed by the United States government and the Vatican ("Holy See") read in part:

> The establishment of consular relations between **states** takes place by **mutual consent**. [emphasis added] (Art.2 § 1, 21 UST 77, 81 (*supra*) (TIAS 7502) [Same wording **"between states"** in treaty

on diplomatic relations Art. 2, 23 UST 3229, 3231 (*supra*) (TIAS 6820).

That is the *law* of the treaties cited, which cannot be interpreted otherwise by any United States or state courts.

A judge allegiant to a foreign political body, a judge who defies the Constitution as admitted by the Court of Appeals in Part II, Appendix A of the decision hereto, pp. A-5 to A-12, by abusing his discretion, and defying his oath of office, is not under any pretext qualified to be an impartial tribunal.

That Petitioner has a right to a hearing before a fair and impartial tribunal has been argued for centuries:

A FAIR TRIAL IN A FAIR TRIBUNAL IS A BASIC REQUIREMENT OF DUE PROCESS. (In re *Murchison*, 349 U.S. 133, 136 (1955))

This court emphasized again last year that defying the law of the land under the *guise* of religion is not countenanced by any twist of state statute, ie: such as the use of peyote for "religious reasons":

> RESPONDENTS URGE US TO HOLD, QUITE SIMPLY, THAT WHEN OTHERWISE PROHIBITABLE CONDUCT IS ACCOMPANIED BY RELIGIOUS CONVICTIONS, NOT ONLY THE CONVICTIONS BUT THE CONDUCT ITSELF MUST BE FREE FROM GOVERNMENTAL REGULATION. WE HAVE *NEVER* HELD THAT, AND DECLINE TO DO SO NOW" [emphasis added])*Employment Division, Department of Human Resources of Oregon v. Smith* (Supra)___U.S.___[58 U.S. Law Week 4433, 4436 (1990)]

A judge on the bench ruling against our Constitution under the cloak of his religion is *ONE THOUSAND* times more dangerous than an individual consuming peyote in the name of his religion. Both are defying the Law of The Land.

III

FINALITY OF HIGHEST STATE COURT DECISION: THE TEST IS NOT WHETHER UNDER LOCAL RULES OF PRACTICE THE JUDGMENT IS DENOMINATED FINAL, BUT WHETHER THE FEDERAL QUESTION DECISION IS FINAL, IN THE STATE COURT:

In *Pope v. Atlantic Coast Line R.Co.* 345 US 379 (1953), this court stated that the overruling of a demurrer, like the issuance of a temporary injunction is ordinarily not a "final" judgment, but the question is whether the federal question is in fact ripe for adjudication, when tested against the policy of § 1257. (345 US 379 at 382)

The First Amendment rights of Petitioner have selectively been denied in a California parking lot open to the public , and a fair hearing before an impartial judge has been denied contravening Article VI of the United States Constitution. Those are final state court decisions.

Regardless of any further action in the trial court, these federal questions will not be changed *by the state court*, and are ripe under §1257 (a), for adjudication by the United States Supreme Court.

IV

IMPARTIAL TRIBUNAL? LET US EXAMINE SOME FACTS ABOUT THE IMPARTIAL TRIBUNAL!

Judge O'Neill, a Roman Catholic judge, notoriously abused his discretion, barring distribtuion of anti Romanist word of God.

Why did the Court of Appeal, by choice, *choose* to ignore *relevant* case law, and selectively bar The Gospel

of The Lord Jesus Christ from parking lots open to the public, and *choose* to bar rehearing before an impartial judge?

Judge Patricia Benke, author of the decision (See Appendix A hereto, p. A-20) graduated from the Roman Catholic law school, University of San Diego. She was immediately recruited directly from the University of San Diego by the California State Attorney General's office, and with much help from State Governer Deukmejian.

Judge Richard Huffman, concurring in Judge Benke's opinion, Appendix A hereto p. A-20, has been professor of law at Roman Catholic, University of San Diego, since 1972!

Court of Appeal Judges Todd and Huffman interrupted Petitioner's oral argument on treaties between the United States and the Pope, and advised that I get on to something else, that I would not be able to convince the panel that the Roman Catholic church is a political body under California Code of Civil Procedure §170.2, for purposes of disqualifying a judge. "It is not going to wash." (Judge Huffman).

[The United States treaties in force show otherwise.]

(Tape of oral argument dated June 18, 1990, Case No.D010668, in possession of the Court of Appeal, Fourth Appellate District Division One, and copy in possession of Petitioner.)

In California by Judicial Code, Canon 2.C. it is stated clearly that invidious religious discrimination by judges is not only encouraged as in the instant case, but is appropriate for California judges:

> It is inappropriate for a judge to hold membership in any organization, ***excluding*** religious organizations, ***that practices invidious discrimination*** on the basis of race, sex, ***religion*** or national origin. (italics added) (Div II. Code of Judicial Conduct, Canon 2.C.)

Why the animosity towards The Reformation King James Bible by Rome? It exposes the false teachings of the

Pope. See Gospel tract at Appendix J hereto which is *the real issue* of this court case:

WHAT IS YOUR DECISION?

☐ **I choose to trust Jesus as my Saviour.**
"He that believeth on him is not condemned:"
John 3:18a
"For with the heart man believeth unto rightousness; and with the mouth confession is made unto salvation."
Romans 10:10
"For whosoever shall call upon the name of the Lord shall be saved."
Romans 10:13

☐ **I choose to reject Jesus and keep my way.**
"...but he that believeth not is condemned already, because he hath not believed in the name of the only begotten Son of God."
John 3:18b
"And whosoever was not found written in the book of life was cast into the lake of fire."
Revelation 20:15

"Please send this tract to us to let us know that after reading it, you have decided to trust Jesus Christ as your Saviour." (See Appendix J hereto)

Trusting The Jesus Christ of The Holy Bible alone can save you:

"For by grace are ye saved through faith;
and that not of yourselves:
it is the gift of God:"
"Not of works, lest any man should boast."
Ephesians 2:8,9
"By the which will we are sanctified through the offering of the body of Jesus Christ once for all."
"And every priest standeth daily ministering

and offering oftentimes the same sacrifices, which can never take away sins:"
"But this man, after he had offered one sacrifice for sins for ever, sat down on the right hand of God;"
"From henceforth expecting till his enemies be made his footstool."
"For by one offering he hath perfected for ever them that are sanctified."
Hebrews 10:10-14

Not the Pope, nor mariolotry, nor a puppet christ dangling from the Pope's staff, nor a pseudo-christ in a cookie at mass, and not the con game of buying relatives out of purgatory. Only by The *one* offering of his blood that Jesus Christ himself made at calvary are we saved, plus NOTHING!

"As we said before, so say I now again, If any man preach any other gospel unto you than that ye have received, let him be accursed."
Galatians 1:9

"Neither is there salvation in any other: for there is none other name under heaven given among men, whereby we must be saved."
Acts 4:12

God's word, through the apostle Paul stated:
"THAT YE MIGHT LEARN IN US NOT TO THINK OF MEN ABOVE THAT WHICH IS WRITTEN."

Reformation 1611 King James Bible
I Corinthians 4:6(c)

The King James Bible exposes the false teaching of Rome. The Pope and his followers are prejudiced against the King James Bible, The word of God. That is the sum and substance of the issue in this case, which is *exposed*

by the courts' granting Hare Krishna in *Carreras* (ISKCON) 768 F2d 368 (9th C.A. *supra*), prisoners' unions and labor union speech rights in California parking lots open to the public.

The record is devoid of any evidence of interference in the shopping center. The record is replete with evidence of judicial partiality! See *Garner v. State of Louisiana* 368 US 157 (1961) where the court held that there was insufficient evidence that three blacks: John Garner, Mary Briscoe, Jannette Hoston, sitting at a "white lunch counter" in the Parish of East Baton Rouge, Louisiana, were "disturbing the peace" or ***interfering*** with the **privately** owned business establishment open to the public. [*No showing of interference* as in the instant case!] The *Garner* case traveled all the way through the biased judges of the Louisiana state courts, and finally received a Constitutional ruling by an impartial tribunal, the United States Supreme Court.

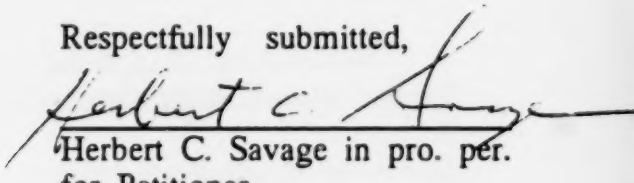
V

CONCLUSION

It is respectfully submitted that the discriminatory decisions of the Court of Appeals decisions Part I affirming denial of injunctive relief, and Part III denying rehearing before an impartial judge, should be summarily reversed and remanded, if not given full plenary hearing before this court.

DATED: March 8, 1991

Respectfully submitted,



Herbert C. Savage in pro. per.
for Petitioner

APPENDIX A

CERTIFIED FOR PUBLICATION
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

FILED
SEPT 24, 1990
COURT OF APPEAL
FOURTH DISTRICT

HERBERT C. SAVAGE,
Plaintiff and Appellant,
v.
TRAMMELL CROW COMPANY, INC., et al.,
Defendants and Respondents.

D010668
(Super. Ct. No. N43908)

APPEAL from a judgement and orders of the Superior Court of San Diego County, Robert J. O'Neill, Judge. Reversed in part; affirmed in part.

Herbert C. Savage, in pro. per., for Plaintiff and Appellant.

Robert M. Gans, Keith A. Jones and Gans & Blackmar for Defendants and Respondents.

INTRODUCTION

In this case a security guard for a shopping center prevented plaintiff Herbert C. Savage from distributing religious tracts in the shopping center parking lot. In response Savage filed a complaint against the management company which is responsible for operation of the shopping center and the security company which employed the guard. Among other relief, Savage sought a preliminary injunction permitting him to distribute his tracts in the parking lot. In opposing Savage's application for an injunction, the shopping center argued litter and traffic problems justified its prohibition on leafletting in the center's parking lot. The trial court denied the injunction as well as Savage's request the trial judge disqualify himself because of the trial judge's religious belief.

In addition to opposing Savage's request for injunctive relief,the management company brought a demurrer to the complaint on the grounds Savage had no right to engage in "religious"activities anywhere at the shopping center. The trial court sustained the demurrer without leave to amend and entered an order dismissing the complaint.

We affirm in part and reverse in part. The owner of a shopping center may impose reasonable limits on the time, place and manner of such activity. We conclude the shopping center presented persuasive evidence its prohibition against leafletting in the parking lot is such a limitation. Thus, we affirm the order denying Savage a preliminary injunction allowing leafletting in the parking lot. We also affirm the trial judge's refusal to disqualify himself. However, the owner or operator of the shopping center may not draw distinctions between "political" and "religious" speech. Thus, the defendants'prohibition on religious activity anywhere at the center gave rise to a cause of action against them; accordingly we reverse the judgment dismissing the complaint.

SUMMARY

According to his verified complaint, Savage went to

the Del Norte Plaza Shopping Center in Escondido on May 25, 1989, and attempted to place gospel tracts on cars in the parking lot. Savage was stopped by a security guard who told him the parking lot was private and that he had no business putting the tracts on cars in the shopping center.

On the following day, Savage spoke with Brenda Foster, an employee of defendant Trammell Crow Company, Inc. (Trammell Crow). Trammell Crow manages the shopping center. According to Savage, Foster told him she would not permit him to distribute his gospel tracts in the parking area of the shopping center and the policy was her policy.

On June 2, 1989, Savage filed a complaint against Trammell Crow and the security service for the shopping center, defendant Heritage Securty Services, Inc. (Heritage). The complaint alleged the defendants' conduct violated Savage's constitutional rights.

On the same day Savage filed his complaint, the superior court issued an order to the defendants to show cause why a preliminary injunction permitting Savage to distribute his tracts should not issue. In particular the order stated the defendants would be restrained from the "threatened arrest, arrest, [harassment], and prosection of plaintiff for distribution of religious tracts in parking areas of Del Norte Plaza Shopping Center."

In response to the order to show cause, Trammell Crow submitted the declaration of one of its partners, Ron Burns. Burns stated Del Norte Plaza had certain "'Rules and Regulations Relating to Use of Shopping Center Property for Purposes of Political Expression'." According to Burns's declaration, the rules and regulations provide in part: "'These rules shall not, by implication or otherwise, be deemed or construed to permit any activity other than Political Expression [as defined], and the owners of the center reserve the right to prohibit any activity other than that specifically described in these rules.'"Burns's declaration further stated that the term "political expression" is defined by the rules and regulations

as"'activities... in obtaining signatures to any petition directed to any governmental or other political body or in disseminating political information.'"

With respect to leafletting in the parking lot, Burns stated: "We have consistently prohibited the distribution of leaflets, flyers and handbills in the parking lot, and we have uniformly applied that prohibition." A letter Burns sent to one of the center's tenants stated: "I am writing in regard to your[run in] with Center Security on April 16, 1989 when flyers were being placed on vehicles in the parking lot.[¶] ...Section16,Paragraph 3 (Common Areas) of the Lease gives the Landlord the right to 'establish and enforce reasonable rules and regulations applicable to all tenants concerning the maintenance, management, use, and operation of the common areas'. [¶]My policy on flyers is that they are prohibited." The letter was attached to Burns's declaration.

On July 5, 1989, prior to the hearing on the order to show cause,Trammell Crow and Heritage filed a demurrer to Savage's complaint in which they alleged his complaint failed to state facts sufficient to constitute a cause of action. They argued the Supreme Court's opinion in *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899 *(Robins)*, only provided California citizens with the right to conduct "political" activities at privately owned shopping centers. Because in distributing his gospel tracts Savage was advancing his religious beliefs, the defendants asserted they had the right to completely prohibit his activities at the shopping center. In the alternative they argued the center's prohibition on leafletting in the parking lot was a reasonable limitation on the time, place and manner of political or religious activity.

The trial court heard argument on the order to show cause on July 7, 1989, and refused to issue the preliminary injunction.

On July 17, 1989, Savage submitted to the court a motion for rehearing in which he alleged the judge who heard

the order to show cause, Hon. Robert J. O'Neill, was a Roman Catholic and therefore biased against him and his efforts to spread the gospel.

Judge O'Neill heard argument on the demurrer on July 26, 1989, and granted it without leave to amend. On the same day Judge O'Neill entered an order denying Savage's motion for rehearing.

Immediately following the hearing on the defendants'demurrer, Savage filed a notice of appeal from the order denying the preliminary injunction, the order granting the demurrer and the order denying his motion for rehearing.

An order dismissing the complaint was entered on August 16, 1989.

DISCUSSION

I

Preliminary Injunction

A. The Parking Lot Prohibition

The order to show cause which Savage filed asked the trial court to grant him the right to distribute religious tracts "in parking areas of Del Norte Plaza Shopping Center." Burns's declaration, submitted in opposition to the preliminary injunction, states: "A primary reason why...distribution [in the parking lot] has been prohibited is because of the litter which inevitably results when hundreds of flyers are distributed by one or more groups. This prohibition has been uniformly enforced regardless of the nature or contents of the leaflets....[¶]The parking facilities of the Del Norte Plaza are typical of other smaller centers. While trash containers are located in the Plaza's common area walkways adjacent to stores, we do not have trash containers placed in our parking facilities. In that regard, I believe that the placement of leaflets or flyers on unoccupied automobiles (or handing such flyers to individuals in the parking lot) would substantially increase the litter problem, as such handbills can be dislodged from

unoccupied cars by wind; further, a patron of the center finding an unwanted leaflet on his automobile may be inclined to simply throw the leaflet on the ground as he is entering his car, as trash containers are not placed next to each parking space. Moreover, I am concerned that the distribution of such handbills within our parking facilities may unduly hamper ingress and egress patterns within the parking facilities, particularly if there are several individuals distributing such leaflets in the parking lot. This would not only inconvenience our patrons but potentially increase the occurrence of traffic accidents." As we have previously noted, attached to Burns's declaration was a letter he recently wrote to a tenant enforcing the parking lot prohibition.

In seeking a preliminary injunction, Savage bore the burden of demonstrating both likely success on the merits and the occurrence of irreparable harm before a final judgement could be entered. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277,286.)[1] In our view Burns's declaration was sufficient to defeat Savage's request for a preliminary injunction because the declaration demonstrated Savage was not likely to succeed in establishing a right to distribute his tracts in the parking lot. As we explain in greater detail below, the ban on parking lot leafletting is a valid regulation of the time, place or manner of activity otherwise protected by the California and federal Constitutions.

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[1] When a trial courts denies an application for a preliminary injunction, it implicity determines that the plaintiffs have failed to satisfy either or both of the 'interim harm' and 'likelihood of prevailing on the merits' factors. On appeal, the question becomes whether the trial court abused its discretion in ruling on both factors. Even if the appellate court finds that the trial court abused its discretion as to one of the factors, it nevertheless may affirm the trial court's order if it finds no abuse of discretion as to the other." (*Cohen v. Board of Supervisors, supra,* 40 Cal.3d 277 at pp. 286-287.)

B. Regulation of Time, Place or Manner.

In *Lloyd Corp. v. Tanner* (1972) 407 U.S. 551, 567-570 [92

S.Ct. 2219], the United States Supreme Court held the right to free expression guaranteed by the First Amendment to the federal Constitution did not outweigh a shopping center owner's Fifth Amendment right to control its property. Thus in *Lloyd* the court held that, consistent with the First Amendment, a shopping center could prohibit distribution of leaflets which communicated no information relating to the center's business. (*Id.* at p. 570.) In *Robins v. Pruneyard Shopping Center, supra*, 23 Cal.3d at page 910, our Supreme Court held that unlike the First Amendment, California's Constitution protects the free speech and petition rights of the California citizens even when those rights are exercised in a privately owned shopping center. Relying on article I, section 2(a) of the California Constitution, the"liberty of speech clause, "the court in *Robins* found a shopping center could not prevent a group of high school students from soliciting signatures on a petition opposed to a United Nations resolution on "Zionism."

In extending the liberty of speech clause to private shopping centers, the court in *Robins* stated: "By no means do we imply that those who wish to disseminate ideas have free rein."(23Cal.3d at p. 910.) Rather the court found that property owners may regulate the time, place and manner of such activity. (*Ibid.*) Indeed because of the owners' ability to regulate expressive activities, the court reasoned any intrusion on private property rights was limited. "'A handfull of additional orderly persons soliciting signatures and distributing handbills in connection therewith, under reasonable regulations adopted by defendant to assure that these activites do not interfere with normal business operations [citation] would not markedly dilute defendant's property rights.'" (*Id.* at p. 911.)

In giving private property owners the right to establish

"time, place and manner" rules, the court used the same formulation it had employed in describing the power government possesses with respect to public forums and the conduct of activities protected by the First Amendment. (See e.g. *Dulaney v.Municipal Court*(1971) 11 Cal.3d 77, 84-85; *Dillon v. Municipal Court* (1971) 4 Cal.3d 860, 869-870; see also *In re Hoffman* (1967)67 Cal.2d 845, 852-853.) As the court in *Dulaney v. Municiapl Court* explained, that formulation and the guideline which our Supreme Court has developed for its use were "fashioned from a long line of United States Supreme Court cases." (11 Cal.3d at p.84, fn. omitted.)

Thus although Savage's right to engage in expressive activity at shopping centers is found solely in the broader protection provided by California's Constitution, a shopping center's power to impose time, place and manner restrictions on such activity is nonetheless measured by federal constitutional standards. "In essence, *Robins v. Pruneyard. Shopping Center, supra,* 23 Cal.3d 899, in affirming a shopping center owner's right to impose reasonable time, place and manner restrictions on petitioning activity, recognized in the owner important rights of substance; those rights are identified as freedom from disruption of normal business operations and freedom from interference with customer convenience. However, despite plaintiffs' characterization to the contrary, *Robins did not establish a new standard of reasonableness to be applied to private property." (HCHH Associates v. Citizens for Representative Government* (1987) 193 Cal.App.3d 1193, 1208, italics added; see also *Gonzales v. Superior Court* (1986) 180Cal.App.3d 1116, 1123; *U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Labortory* (1984) 154 Cal. App.3d 1157, 1163.)

Accordingly, we note "even in a public forum the government may impose reasonable restrictions on the time, place or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated

speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.' (*Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293, 104, S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984); see *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 648, 101 S.Ct. 2559,2564, 69 L.Ed.2d 298 (1981) (quoting *Virginia Pharmacy Bd. v.Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771, 96S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976)." (*Ward v. Rock Against Racism* (1989)____U.S.____[109 S.Ct. 2746, 2753-2754]; see also *Dulaney v. Municipal Court, supra,* 11 Cal.3d at p. 88; *Dillon v. Municipal Court, supra,* 4 Cal.3d at p. 869; *H-CHH Associates v. Citizens for Representative Government, supra,* 193 Cal.App.3d at pp. 1207-1208.) Trammell Crow's parking lot restriction meets each of these requirements.

1.

"The principal inquiry in determining content neutrality, in speech cases generally and in time, place or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.[Citation.] The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental affect (sic) on some speakers or messages but not others."(*Ward v. Rock Against Racism, supra,*____U.S.____ [109 S.Ct. at p. 2754].) In this case the ban on leafletting in the parking lot is based in Burns's concerns about littering and interference with ingress and egress from the center. Plainly these concerns are unrelated to the message any particular leafletter is attempting to convey.

We recognize that a regulation which is not explicitly content related may nonetheless be invalid if the regulation provides officials with unbridled discretion in enforcing it. (*Ward v. Rock Against Racism, supra,* ____U.S.____ [109

S.Ct. at p. 2755.]) Such unbridled discretion permits a decision to be based impermissibly on the content of expression. *(Dillon v. Municipal Court, supra,* 4 Cal.3d at pp. 869-870; *H-CHH Associates v. Citizens for Representative Government, supra,* 193 Cal.App.3d. at p. 1211.) Here, however, the parking lot ban provides no discretion - leafletting is prohibited, even, as Burns's letter to the tenant demonstrates, when the leafletting is directly related to the shopping center's business.

2.

In addition to being content neutral, the parking lot ban is also narrowly tailored to meet a significant interest of the shopping center. Our courts have consistently recognized a property owner's interest in controlling litter and traffic. (See *H-CHH Associates v. Citizens for Representative Government, supra,* 193Cal.App.3d at p. 1213: litter problem may justify limitation as to place; *In re Hoffman, supra,* 67 Cal.2d at p. 853: "Persons can be excluded entirely from areas where their presence would threaten personal danger or block the flow of passenger or carrier traffic, such as doorways and loading areas.")

Moreover, in determining whether a regulation is narrowly drawn, the United States Supreme Court has held we must give some deference to the means chosen by responsible decision makers.(*Ward v. Rock Against Racism,* ____U.S.____ [109 S.Ct. at p. 2757].) "Lest any confusion on the point remain, we reaffirm today that a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate content neutral interests but that it need be the least restrictive or least-intrusive means of doing so. Rather, the requirement of narrow tailoring is satisfied 'so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.' *United States v. Albertini* 472 U.S. 675, 689, 105 S.Ct. 2897, 2906, 86 L.Ed.2d 536 (1985); see also *Community for Creative*

NonViolence, supra, 468 U.S. at 297, 104 S.Ct. at 3071.To be sure, this standard does not mean that a time, place or manner regulation may burden substantially more speech than is necessary to further the government's legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals. See *Frisby v. Schultz,* 487 U.S., at ___, 108 S.Ct., at 2502 ('[a] complete ban can be narrowly tailored but only if each activity within the proscription's scope is an appropriately targeted evil'). So long as the means chosen are not substantailly broader than necessary to achieve the government's interest, however, the regulation will not be invalid simply because a court concludes that the governemnt's interest could be adequately served by some less-speech-restrictive alternative. 'The validity of [time, place, or manner] regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests'or the degree to which those interests should be promoted. *United States v. Albertini, supra,* 472 U.S., at 689, 105 S.Ct., at 2906; see *Community for Creative NonViolence, supra,* 468 U.S. at 299, 104 S.Ct., at 3072." (*Ward v. Rock Against Racism, supra,*____U.S.____ [109 S.Ct. at pp. 2757-2758, fns. omitted; see also *San Andrews' Sons v. Agricultural Labor Relations Bd.* (1988) 47 Cal.3d 157, 177-179: employer, not court, must establish reasonable restrictions on union organizers right of access to labor camp.)

We also note, "The validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the goverment's interests in an individual case." (*Ward v. Rock Against Racism, supra,* ____ U.S.____ [109 S.Ct. at p. 2759]; see also *Heffron v. International Society for Krishna Consciousness* (1981 452 U.S. 640, 653-654 [101 S.Ct. at p. 2567.) Thus, a regulation must be judged by considering all the groups who would have access to a particular forum and the regulation is valid so long as the property owner

could reasonably have determined that its interests overall would be served less effectively without the regulation. (*Ward v. Rock Against Racism, supra,* ____U.S.____[109 S.Ct. at p. 2759].)

Judged in light of these principles, Trammell Crow's parking lot ban is appropriately tailored to meet the center's interests. Burns, the responsible decision maker, could reasonably conclude, as he did, that without the ban the litter and traffic burden created not just by Savage, but by the center's merhcants and other political or religious groups, would make the parking lot unsightly, inconvenient and unsafe for the center's patrons. (See *Heffron v. International Society for Krishna Consciousness,* 452 U.S. 640, 654-655 [101 S.Ct. at p. 2567].)

3.

The parking lot ban on leafletting is especially appropriate in light of the fact Burns's policy does not prevent leafletting on the center's sidewalks. Thus, Savage and other leafletters are not prevented from reaching the center's patrons; rather, they are merely required to hand their leaflets out in person as opposed to placing them on cars. While we do not doubt access to the parking lot would allow greater and easier distribution of leaflets, the adequacy of alternative channels is not measured by the fondest hopes of those who wish to disseminate ideas. (See *Clark v. Community for Creative NonViolence, supra,* 468 U.S. at p. 295 [104 S.Ct. at p. 3070].) Rather, where, as here, an advocate is given a realistic opportunity to reach his intended audience, the alternative channels of communication are adequate. (*Ibid.*; see *Frisby v. Schultz* (1988) 487 U.S. 474, 483-484 [108 S.Ct. at p. 2501-2502]; *Renton v. Playtime Theatres, Inc.* (1986) 475 U.S. 41, 53-54 [106 S.Ct. at pp. 932-933].)

In sum, Trammell Crow's parking lot ban is a reasonable restriction on the time, place or manner of activities protected by the First Admendment and the liberty of speech clause. The ban is content neutral and narrowly drawn to protect

the center's legitimate interests. Accordingly, the trial court did not abuse its discretion in denying Savage's application for a preliminary injunction permitting him to distribute his gospel tracts in the parking lot.

II

Order Dismissing Plaintiff's Complaint[2]

Our obligations in reviewing a dismissal following an order sustaining a demurrer without leave to amend are well established. We deem true all material facts pleaded in the complaint and those which arise by reasonable implication. (*Lewis v. Purvin* (1989) 208 Cal.App.3d 1208, 1213.) The plaintiff bears the burden of demonstrating either that the demurrer was sustained erroneously or that sustaining the demurrer without leave to amend was an abuse of discretion. (*Ibid.*) A demurrer may not be sustained without leave to amend where the plaintiff has alleged facts showing entitlement to relief under any possible legal theory. (*Ibid.*)

As we have noted, in providing access to shopping centers the court in *Robins* relied on article I, section 2(a) of the California Constitution which provides: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (Italics added.) Moreover, in interpreting this provision our Supreme Court has consistently held that it provides the

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[2] Although the trial court's July 26, 1989, order sustaining the demurrer without leave to amend was not appealable (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal § 82, p. 105), the trial court's August 16, 1989, order dismissing Savage's complaint was appealable as a final judgment. (Witkin, Cal. Procedure, *supra*, § 75, p. 99.) Under these circumstances Savage's August 6, 1989, notice of appeal is deemed to have been filed immediatley after the order dismissing his complaint. (Rule 2(c), Cal. Rules of Court.)

citizens of this state greater protection than the federal Bill of Rights. "Though the framers could have adopted the words of the federal Bill of Rights they chose not to do so. [Citation.] Special protections thus accorded speech are marked in this court's opinions. *Wilson v. Superior* (1975) 13 Cal.3d 652, 658, for instance, noted that'[a] protective provision more definitive and inclusive than the First Amendment is contained in our state constitutional guarantee of the right of free speech and press.' " (*Robins v. Pruneyard Shopping Center, supra*, 23 Cal.3d at p. 908.)

Despite the broader protection provided by California's Constitution, Trammell Crow and Heritage nonetheless argue Savage may not state any claim under Robins because they believe *Robins* provides no protection for religious expression. We do not read *Robins* so narrowly.

Initially we note that in analyzing the protection afforded religious expression, the United States Supreme Court has recently rejected the very limiation the defendants would have us embrace. "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all' governmental regulation of religious *beliefs* as such'....

"[T]he 'exercise of religion' often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation. *It would be true, we think (though no case of ours has involved the point), that a state would be 'prohibiting the free exercise [of religion]' if it sought to ban such acts or abstentions only when they are engaged in for religious reasons* [italics ours], or only because of the religious belief that they display. It would doubtless be unconstitutional, for example, to ban the casting of' statutes that are to be used for worship purposes,' or to prohibit bowing down before a golden calf." *(Employment Division,*

Department of Human Resources of Oregon v. Smith (1990) __U.S.__ [58 U.S. Law Week 4433, 4434-4435].) The same principle was articulated in *Widmar v. Vincent* (1981) 454 U.S. 263, 277 [102 S.Ct. 269], where a state university permitted only nonreligious use of its facilities: "Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion of religious speech. Its exclusionary policy violates the fundamental principle that state regulation of speech should be content-neutral, and the University is unable to justify this violation under applicable constitutional standards."

We recognize courts have distinguished certain types of speech as being entitled to less protection under the First Amendment. Thus it has been stated that "Not all speech receives the same degree of constitutional protection. '[O]bscene material is unprotected by the First Amendment.' (*Miller v. California* (1973) 413 U.S. 15, 23 [37 L.Ed. 419, 430, 93 S.Ct. 2607].) And the Constitution 'accords a lesser protection to commercial speech than to other constitutionally guaranteed expression.' (*Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n* (1980) 447 U.S. 557, 563 [65 L.Ed. 341, 349, 100 S.Ct. 2343].) *Freedom of ideological expression, on the other hand, is a central First Amendment value. 'Ideological expression, be it oral, literary, pictorial, or theatrical, is integrally related to the exposition of thought —thought that may shape our concepts of the whole universe of man.'* (*VA Pharmacy Bd. v. VA. Consumer Council* (1976) 425 U.S. 748, 779 [48 L.Ed. 346, 369, 96 S.Ct. 1817] (conc. opn. of Stewart, J.) quoted, *Metromedia, Inc. v. San Diego* [(1981) 453 U.S. 490,] 505, fn. 12 [69 L.Ed.2d at p. 813].)" (*City of Indio v. Arroyo* (1983) 143 Cal.App.3d 151, 157-158, italics added.) The defendants have not cited, and we have been unable to find, any case which creates any differential between the protection afforded religious expression and the protection provided for political activities.

Indeed, the facts in cases which enforce California's

liberty of speech clause demonstrate no material distinction between the political and religious nature of expression. For instance in *Robins* itself the student plaintiffs were attempting to solicit support for "Zionism." According to the American Heritage Dictionary (1976), page 1489, "Zionism" as "A plan or movement of the Jewish people to return from the Diaspora to Palestine." Despite the obvious religious element of their activity, the Supreme Court held the students had the right to circulate a petition opposing a United Nations' Zionism resolution. (*Robins v. Pruneyard Shopping Center, supra*, 23 Cal.3d at p. 911.)

Similarly in *Carreras v. City of Anaheim* (9th Cir. 1985) 768 F.2d 1039, members of the International Society for Krishna Consciousness (ISKCON) sought an injunction permitting them to solicit donations outside the Anaheim convention center and Anaheim stadium. Again despite the religious nature of the plaintiffs' activity, the court found the city could not enact an ordinance which prohibited their activities. Relying on California's liberty of speech clause the court said: "[T]he ordinance on its face violated the California Constitution by discriminating between regulated and unregulated speech on the basis of its content." (*Id.* at p. 1048.)[3]

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[3] The practical problems posed by adopting the distinction the defendants propose are highlighted by Savage's brief itself. In his attempt to show us Judge O'Neill's religious affiliation disqualified him, Savage produced a wholesale attack on the political activities of the Roman Catholic church. Savage argues there was collusion between the Vatican, Benito Mussolini, Francisco Franco and Adolph Hitler. He suggests Catholic priests were responsible for the assassination of Abraham Lincoln and that the Vatican was engaged in a conspiracy to control the legislative and judicial branches of our government. Savage's agruments could be characterized as political statements in which case the defendants presumably would permit him to distribute copies of his briefs at their shopping center. They might also be characterized as religious tracts which defendants would prohibit.

Although there is no authority which allows us to denigrate the value of religious expression in our society, the defendants nonetheless contend the holding in *Robins* protects only people who wish to engage in political activity. The defendants place particular emphasis on the fact that in *Robins* the Supreme Court relied on the right of the people to petition their government (art. 1, § 3, Cal. Const.), as well as the liberty of speech clause, in finding that the shopping center operator in that case could not prevent the student plaintiffs from promoting Zionism. "[W]e stress... that to prohibit expressive activity in the centers would impinge on constitutional rights beyond speech rights. Courts have long protected the right to petition as an essential attribute of governing. [Citation.] The California Constitution declares that 'people have the right to...petition government for redress of grievances....' (Art. I, § 3.) That right in California is,moreover, vital to a basic process in the state's constitutional scheme direct initiation of change by the citizenry through initative, referendum, and recall. [Citations.]" (*Robins v. Pruneyard Shopping Center, supra,* 23 Cal.3d at pp. 907-908.)

We do not read the court's reliance on the right of the people to petition the government as permitting a restriction on the religious content of the activities the court was protecting. Such a limitation is inconsistent with the language of opinion itself: "To protect *free speech* and petitioning is a goal that surely matches the protecting of health and safety, then environment, aesthetics, property values and other societal goals that have been held to justify reasonable restrictions on private property rights." (*Robins v. Pruneyard Shopping Center, supra,* 23 Cal.3d. at p. 908, italics added.) The Defendants' interpretation is also inconsistent with the court's other opinions in the area. For example, the court has stated: "The shopping center may no more exclude individuals who wear long hair...who are black, who are members of the John Birch Society, or who belong to the American Civil Liberties Union, merely because of these characteristics or associations, than may the City of San

Rafael." (*In re Cox* (1970) 3 Cal.3d 205, 217-218, fn. omitted.)

More importantly the defendants' interpretation of *Robins* would place it at odds with the federal Constitution. After our Supreme Court decided *Robins*, the property owners appealed to the United States Supreme Court and the court agreed to hear their appeal. In *Pruneyard Shopping Center v. Robins*(1980) 447 U.S. 74 [100 S.Ct. 2035], the Supreme Court affirmed the judgement in *Robins*, finding that although under its earlier opinion in *Lloyd Corp. v. Tanner, supra*, 407 U.S. 551, California was not required to give the students access to the shopping center, California could, in exercising its police powers, require greater access than mandated by the federal constitution. (*Id.* at p. 81.) However the court was careful to point out the state's power to impose such burdens on the use of private property could not "amount to a taking without just compensation *or contravene any other federal constitutional provision.*" (*Id.* at p. 82, italics added.) As we have seen, under *Widmar v. Vincent, supra*, 454 U.S. at page 277, although the state may not be required by the Constitution to provide a forum for the exercise of free speech rights, when it does provide such a forum, as California clearly has, it may not restrict use of the forum on the basis of the religious content of a speaker's message. Under the defendants' interpretation of *Robins*, however, that is precisely what our Supreme Court created: a forum which permits expression of political ideas, but not religious ones. We reject such an interpretation.

Finally, as we have noted, the court in *Robins* carefully considered the burdens it was placing on the operators of shopping centers and gave them power to regulate the time, manner and place of free speech activities. (*Robins v. Pruneyard Shopping Center, supra*, 23 Cal.3d at pp. 910-911.) There is nothing in this record, however, which suggests the burden imposed by unpopular religious expression is any greater than the burden by unpopular political expression. Indeed it is difficult to imagine how Savage's gospel tracts would create any greater interference with the business of

Del Norte Plaza than leaflets distributed by proponents or opponents of the death penalty or gun control.[4]

In sum then, we reject the defendants' contention they had the power to ban religious expression.[5] Under *Robins* they were required to permit Savage to engage in religious as well as political activities at Del Norte Plaza. Since the record demonstrates the defendants' policy was to prohibit all religious activity at the center, it follows Savage could allege a cause of action against them. Thus the trial court abused its discretion in sustaining the defendants' demurrer without leave to amend.

III

Bias

Code of Civil Procedure section 170.2 provides in part: "It shall not be grounds for disqualification that the judge:

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[4] We note however that while regulations based on the content of the speaker's message are not permissible, the means employed to convey a message are subject to regulation. Thus the government may validly draw a distinction between distributing leaflets and soliciting donations. (*U.S. v. Kokinda* (1990) __U.S.__ [110 S.Ct. 3115, 3124].)

[5] The defendants also argue Del Norte Plaza should not be made subject to *Robins* because it is smaller than the Pruneyard shopping center discussed in that case. We found no material difference between the two shopping centers. According to Savage, Del Norte Plaza consists of 14 acres; the Pruneyard was on 21 acres (*Robins v. Pruneyard Shopping Center,* supra, 23 Cal.3d at p. 902). According to Burns, the manager of Del Norte Plaza: "The Plaza's major tenants include a supermarket, a drug store and movie theater. It also contains a Newberry's, a Value Craft, several restaurants, 40 smaller retail shops, and automobile parking facilitites." In comparison, the Pruneyard contained "65 shops, 10 restaurants, and a cinema." (*Robins v. Pruneyard Shopping Center, supra,* Cal.3d. at p. 902.) Thus although the Del Norte Plaza is somewhat smaller than the Pruneyard, the differences do not suggest Del Norte Plaza is any less important or accessible as a place to promote ideas. (See *id.* at p. 906.)

[¶] (a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding invloves the rights of such a group." Thus Judge O'Neill had no power to disqualify himself on the basis of his membership in the Roman Catholic Church; accordingly he did not err in denying Savage's motion for rehearing.

Judgment of dismissal reversed; order denying preliminary injunction and order denying rehearing affirmed.

CERTIFIED FOR PUBLICATION

BENKE, J.

WE CONCUR:

TODD, Acting P.J.

HUFFMAN, J.

APPENDIX B

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

Filed Stephen M. Kelly, Clerk
October 17, 1990
Court of Appeal Fourth District

HERBERT C. SAVAGE, D010668
Plaintiff and Appellant, (Super. Ct. No. N43908)
v.
TRAMMELL CROW COMPANY, INC.
et al.,
Defendants and Respondents

THE COURT:

The opinion filed September 24, 1990, is modified as follows:

Page 2, line 15: replace "religious" activities with other than political petitioning

Page 3, lines 3-4: replace prohibition on religious activity anywhere at the center with written prohibition against nonpolitical expression

Page 3, lines 4-5: replace the semi-colon with a period, add two spaces and capitalize the letter a

Page 3, line 9: Insert footnote at end of sentence which reads The tracts depict the crucifixion of Jesus Christ, state "All this I did for Thee" and set forth 22 quotation from the Bible. Each tract states: "Please send this tract to us to let us know that after reading it, you have decided to trust Jesus Christ as your Saviour" and provides an address for the Fellowship Tract League in Lebanon, Ohio. Renumber remaining footnotes consequentially.

Page 6, line 10: replace granted with sustained

Page 6, line 15: replace granting with sustaining

Page 16, line 18: end paragraph after cars. and begin new paragraph with while

Page 17, line 7: insert a comma after neutral; delete and

Page 17, line 8: insert before the period and provides an adequate alternative forum for expression.

Page 19, lines 3-4: replace religious expression with Savage's activities. Before last sentence, insert According to the respondents' brief Trammell Crow and Heritage filed in this court, "If Appellant feels the need to express his religious views, he may publish these views in writing, or distribute leaflets in a public park, or telephone others to express his view, or take any of the myriad of other available steps to communicate his thoughts. There is no necessity for Appellant to enter upon private property to express his views, such that the shopping center owner's property rights should be superseded." [1]Renumber remaining footnotes

---

[1] In their petition for rehearing Trammell Crow and Heritage protest they have never asserted a right to bar Savage's activities because of its religious content. This contention is of course at odds with the quoted portion of the argument they made in their respondents' brief. It is also at odds with the points and authorities they filed in the trial court. ("If plaintiff wishes to communicate his religious views to others, it is not essential for him to impose upon the constitutionally protected rights of Defendants"). More importantly Trammell Crow's and Heritage's current position conveniently ignores Del Norte Plaza's "Rules and Regulations Relating to Use of Shopping Center Property for Purposes of Political Expression." As we have seen these rules define "political expression" as petitioning political bodies or "disseminating political information"; as we have also seen the rules do not permit "any activity other than Political Expression [as defined]." On their face these rules completely bar

consequentially.

Page 23, line 17: insert the after of

Page 26, line 4: replace activities with expression

Page 26, line 6: replace religious activity with nonpolitical expression

The petitions for rehearing are denied.

TODD, Acting P.J.

Copies to: All Parties

Savage's attempt to disseminate religious as opposed to political information. If this prohibition against nonpolitical expression is enforceable under *Robins*, plainly Savage has no valid claim against the operators of Del Norte Plaza and the trial court did not err in sustaining the demurrer without leave to amend. If, on the other hand, *Robins* protects more than the "politcal expression" permitted in Del Norte's rules, Savage could state a valid claim against the defendants and the demurrer should not have been sustained without leave. Thus, despite defendants recent protests to the contrary, the record here leaves us no choice but to discuss the distinction between the dissemination of political information permitted by Del Norte Plaza's rules and Savage's efforts to disseminate strictly religious information.

APPENDIX C

Court of Appeal

Fourth District, Division One
Symphony Towers
750 B Street, Suite 5000
San Diego, California 92101

Chambers of
Patricia D. Benke
Associate Justice

October 22, 1990

Edward W. Jessen
Reporter of Decisions
455 Golden Gate Avenue
State Building
San Francisco, California 94102

Re: Herbert C. Savage v. Trammell Crow Company, Inc., D010668, filed September 24, 1990, modified October 17, 1990

Dear Mr. Jessen:

Due to clerical oversight, the following phrase was omitted from the modification of the above opinion: Page 3, between line 4 and 5, insert new paragraph There is no change in the judgment.

Very Truly yours,

Lorna S. Luthy
Secretary

s/
ccs: All Parties

APPENDIX D

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
Fourth Appellate District, Division One, No. D010668
S018054
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

SUPREME COURT
FILED
DEC 13 1990
Robert Wandruff Clark
DEPUTY

HERBERT C. SAVAGE, Appellant
v.
TRAMMELL CROW COMPANY INCORPORATED Et Al., Respondents

Appellant's petition for review DENIED.

Mosk, J. and Broussard, J. are of the opinion the petition should be granted.

The requests for an order directing depublication of the opinion are denied.

Chief Justice

APPENDIX E

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

NUMBER: N-43908
COURT CONVENES AT: 2:00 P.M.
REPORTER:NOT REPORTED
CLERK: TONI HINTON
DATE: JULY 26, 1989
JUDGE: HON. ROBERT J. O'NEILL
DEPT.: H
PLANTIFF/PETITIONER: HERBERT C. SAVAGE
ATTORNEY FOR PLAINTIFF/PETITIONER: PRO PER
DEFENDANT/RESPONDENT: TRAMMELL CROW CO.
ATTORNEY FOR DEFENDANT/RESPONDENT: ROBERT GANS

DEFTS DEMURRER

(NOTE: INAPPLICABLE PORTIONS OF PRINTED FORM OMITTED.)

OTHER: JUDICIAL NOTICE TAKEN AS REQUESTED. GENERAL DEMURRER TO COMPLAINT SUSTAINED WITHOUT LEAVE TO AMEND PER *ROBINS V. PRUNEYARD SHOPPING CENTER* (SIC) (1979)(SIC) 447 U.S. 74. COURT ON ITS OWN MOTION DISMISSES THIS ACTION IN ITS ENTIRETY

FORM 2034 CO. CLK (8/83) MINUTES CAL. NO. "J"

APPENDIX F

FILED
Robert D. Zumwalt, Clerk
AUG 14 1989
BY: T. HINTON, Deputy

ENTERED
AUG 16 1989
Judgment Book 1953 Pg 374

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
NORTH COUNTY JUDICIAL DISTRICT

HERBERT C. SAVAGE
Plaintiff,
v.
TRAMMELL CROW COMPANY, HERITAGE SECURITY SERVICES, INC.,
Defendants.

CASE NO.: N43908

ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND DISMISSING COMPLAINT IN ITS ENTIRETY

The Demurrer to Complaint of Defendants TRAMMELL CROW COMPANY and HERITAGE SECURITY SERVICES, INC. came on regularly for telephonic ruling on July 26, 1989, at 2:00 p.m. in Department "H" of the above-entitled Court, the Honorable Robert J. O'Neill, Judge presiding. Thereafters, oral hearing was not requested by any party hereto.Accordingly, the Court, having read and considered all moving and opposition papers on file herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendants' Demurrer is sustained, without leave to amend; and further,

IT IS HEREBY ORDERED that the this* action be dismissed in its entirety, upon the Court's own motion.

DATED: AUG 14 1989
JUDGE OF THE SUPERIOR COURT
ROBERT J. O'NEILL

04/PL11

* (This wording exactly per original and noted here. This notation is not part of original.)

APPENDIX G

FILED
Robert D. Zumwalt, Clerk
JUL 26 1989
BY: T. HINTON, Deputy

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

HERBERT C. SAVAGE, No. N 43908
Plaintiff, ORDER RE: RE-HEARING
vs.
TRAMMELL CROW COMPANY, INC.
Ron Nelson, Partner
and
HERITAGE SECURITY SERVICES, INC.
Lawrence Richman, President
Defendants.

The court, upon receipt of plaintiff Herbert G.* Savage's Motion for Rehearing for Cause, orders as follows:

To the extent that said motion was intended to be a Challenge for Cause, the application does not meet the statutory requirements of Code of Civil Procedure section 170.3 (c) (1) and thus is not properly before the court.

To the extent that said motion was intended to be a Request for Reconsideration, the request is denied and the papers are herewith returned to the plaintiff.

DATED: JUL 26 1989

JUDGE OF THE SUPERIOR COURT
ROBERT J. O'NEILL

* (Note: Spelling error by court hereby noted. This notation not part of original document.)

APPENDIX H

UNITED STATES CONSTITUTION

Article III

§ 2 (in pertinent part)

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution , the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jursidiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;- between a State and Citizens of another State;-between Citizens of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Article VI

(in pertinent part)

This Consititution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be **THE SUPREME LAW OF THE LAND;** and the JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all

executive and JUDICIAL OFFICERS, BOTH OF THE UNITED STATES AND OF THE SEVERAL STATES, SHALL BE BOUND BY OATH OR AFFIRMATION, TO SUPPORT THIS CONSTITUTION; BUT NO RELIGIOUS TEST SHALL EVER BE REQUIRED AS A QUALIFICATION TO ANY OFFICE OR PUBLIC TRUST UNDER THE UNITED STATES. [emphasis added]

FIRST AMENDMENT, UNITED STATES CONSTITUTION
Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for redress a of grievances.

FIFTH AMENDMENT, UNITED STATES CONSTITUTION
Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person by subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION
Article XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immuntities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28 UNITED STATES CODE

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

§ 2403. Intervention by United States or a State; Constitutional question

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of the State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

TITLE 42 UNITED STATES CODE

§ 1983. Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

UNITED STATES SUPREME COURT RULE 29.4

(c) In any proceeding in this court wherein the constitutionality of any statute of a State is drawn into question, and the State or any agency, officer, or employee therof is not a party, the initial pleading, motion, or paper filed in this Court shall recite that 28 U.S.C. § 2403(b) may be applicable and shall be served upon the attorney general of that State.

UNITED STATES TREATIES IN FORCE

Vienna Convention on Consular Relations, 21 UST 77 (1963) (TIAS 7502)

Article 2

1. The establishment of consular relations between States takes place by mutual consent.

Article 55
Respect for the laws and regulations of the receiving state

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving

State. They also have a duty not to interfere in the internal affairs of that State.

Vienna Convention on Diplomatic Relations
23 UST 3229 (1961) (TIAS 6820)

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 41

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

CALIFORNIA CONSTITUTION ARTICLE I

§ 2. Liberty of Speech

(a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may restrain or abridge liberty of speech or press.

§ 3. Right to Instruct Representatives, Petition and Assembly

The people have the right to instruct their representatives, petition governemnt for redress of grievances, and assemble freely to consult for the common good.

§ 4. Religious liberty

Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

A person is not incompetent to be a witness or juror because of his or her opinions on religious belief.

CALIFORNIA CODES

California Civil Code:

§ 52.1. Civil actions for injunctive or other equitable relief to protect rights; venue; contents, service, and violations of orders; attorney fees; speech

(a) Whenever a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured.

California Code of Civil Procedure:

§ 170.2 Circumstance not constituting grounds for disqualification

It shall not be grounds for disqualification that the judge:

(a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group.

Division II. California Code of Judicial Conduct

Canon 2.C. It is inappropriate for a judge to hold membership in any organization, **EXCLUDING RELIGIOUS ORGANIZATIONS, THAT PRACTICES INVIDIOUS DISCRIMINATION** on the basis of race, sex, **RELIGION** or national origin. (emphasis added)

APPENDIX I

DEPT. OF STATE AUTHORIZATION
LEGISLATIVE HISTORY
P.L. 98-164
[page 85]

JUSTICE IN THE CASE OF THE SLAIN AMERICAN CHURCH WOMEN IN EL SALVADOR

The Senate amendment called on the Government of El Salvador to appoint a special prosecutor to oversee the case of the murdered churchwomen and to assure the U.S. Government that those accused will be tried by a jury by December 2, 1983.

Mission to Catholics CHALLENGER
Vol. XV, No. 12 December 1989
"Holding Forth The Word of Life"
CIPRIANO VALDES
Another Ex-Priest For Biblical Christianity

Mission To Catholics is happy to announce Ex-Priest Cipriano Valdes is establishing a Spanish division of mission To Catholics from our office. He is available for Spanish meetings now and is currently collecting Spanish literature to be made available at booktables and through mail order.

Ordained to the Roman Catholic priesthood on October 18, 1951, Cipriano believed, taught, preached, and defended the doctrine of Rome whether it agreed with the Bible or not. The Church with its councils and traditions came before Sacred Scripture. He believed that the Church of Rome was the one and only which men were bound to believe and obey. For that reason, as did Paul, **Cipriano actively persectued the Church of God (Gal 1:13). He defied evangelical pastors in their own places of worship, excommunicated Protestants, insulted them, humiliated them, forced them out of their parishes. In his own words, "I do not know how much of their literature I destroyed. I recall a particularly shameful incident. I ordered those with me**

to gather up all the Bibles that had been given out because they were false. They did not have the stamp of approval of the true Church, the NIHIL OBSTAT, nor the IMPRIMATUR. They collected sixty-six Bibles, freshly delivered from the press, and with my own hands I tore them up and fed them to the flames. Yet I did it all in ignorance.

MODERN PERSECUTION

Leaders of the Evangelical Fellowship of Mexico have held a two-day consultation to discuss what they believe to be a growing religious intolerance throughout Mexico. Attacks against Evangelicals have taken the lives of five believers, injured dozens more, caused hundreds to flee homelands, and destroyed countless churches—this year alone.

BLOOD BEHIND THE PURPLE CURTAIN

Horrific Evidence that Rome still Persecutes To-day

We are well aware of the expressions, "Iron Curtain" and bamboo Curtain" as used to describe those territories controlled by Russian or Chinese Communism. These lands are largely closed to outsiders, and safe from exposure, the marxists are free to persecute and liquidate all oppostion. Occasionally there is a gap in the Curtain, and as with the recent brutal massacre of student dissidents in Peking, we see what is really happening.

There is another part of the world which is controlled by an equally totalitarian system—Roman Catholicism. Latin America lies behind a Purple Curtain as thick as anything erected by Marxism, and despite the denials of Ecumenists and Charismatics, despite the new image presented by Catholicism in Britian, the fact is that where Rome has power, she still persecutes to-day.

Let us look at some horrific examples:—

I. PROTESTANT PASTORS MURDERED IN MEXICO

According to police in Mexico City a mob of over 100 Roman Catholics in the village of El Cerillo used stones and clubs to beat to death the local Evangelical Pastor, Jerez Hernandez shortly before mid-day on January 16th 1989. According to media reports:—

> "Members of the Evangelical Church group in the village told them that Hernandez was killed by the Roman Catholic mob while conductiong a religious service at his home."

Police said that:-

> "Hernandez had been warned repeatedly by the majority Catholic population of the village that he would be killed if he continued his preaching."

The murder was described as the latest in a series of violent incidents and attacks on Protestants in the region which lies just 75 miles west of Mexico City. As yet police have arrested none of the 100 or more Roman Catholic killers although the state government claims they have been identified.

On the same day just east of Mexico City in Los Reyes La Paz, the body of twenty-one year old Protestant Pastor Julio Davalos Morales was found by police in an empty parking lot. Nearby was his briefcase full of Gospel tracts, and a large number of blood-stained rocks. He too had been stoned to death. He preached in Los Reyes most weekends and had often been threatened by Roman Catholics.

The most sinister aspect in all of this is that the Mexican Roman Catholic Bishops' Conference has frequently complained of the spread of Evangelical and Pentecostal Church groups, whom they call sects. At the semi-annual Bishops' Assembly in November 1988, it was admitted that Protestants now numbered eight million or ten percent of the population, whilst the former Conference President, Roman Catholic Archibishop Sergio Obeso Rivera of Japala accused the United States of seeking to undermine the influence of the Roman Catholic Church in Latin America.

2. Protestant Pastor Stoned to Death in Equador

Antonio Zuna was a twenty-eight year old Quichuna Indian Pastor of about eighty Protestants in Totoras, Equador. A Roman Catholic mob incited by Roman priests and owners of local bars (both having a common interest in halting the spread of Evangelical Christianity) attacked the Protestants at Sunday morning worship. The Protestants were stoned and beaten with cudgels and Pastor Zuna was killed by the mob. The unfinished Protestant Church building was destroyed and the homes and shops of Protestants were attacked, burned, and looted

3. Catholic/Marxist Terror in Nicaragua

In 1979 Nicaragua was taken over by the Communist Sandinistas, heavily supported by members of the Jesuit and Maryknoll Orders of the Roman Catholic Church. Roman Catholic priests such as the Jesuit Minster of Culter, Ernesto Cardinal, served the Marxist Government, and Protestants are persectued.

One such case is that of Pastor Bayardo of the Moravian Church in Leimus., Nicaragua. Sandanista soldiers entered the town in April 1984 and shot all the livestock. The terrified villagers fled to their Protestant Church to pray. From there they watched their homes and shops go up in flames. The Church was surrounded, the men made to dig their own graves at gunpoint, while the women were brutalised. The Sandinistas set fire to the Church, and Pastor Bayardo though badly burned, managed to escape into the jungle with the surviving women and children, finally reaching a refugee camp in Honduras.

These are but a few incidents which illustrate Roman Catholic Terror behind trhe Purple Curtain. All over Latin American, in Peru, Venezuela and elsewhere the Roman Hierachy is demanding new harsh legislation against the Evanglicals. Yet here in Britain, they speak of unity, love and reconciliation.

DON'T LET THE ECUMENISTS FOOL YOU.

THE MASSACRE AT MOUNTAIN LODGE PENTECOSTAL CHURCH BY THE CATHOLIC REACTION FORCE, SHOWS WHAT OUR FATE WOULD BE IF ROME'S PURPLE CURTAIN IS EVER ALLOWED TO FALL OVER ULSTER.

EVENTS IN LATIN AMERICA CLEARLY SHOW THE FATE AWAITING FAITHFUL PROTESTANTS IN A UNITED IRELAND.

OPEN-BIBLE MINISTRIES-P.O. BOX 91-BELFAST,
N. IRELAND.

APPENDIX J

ALL THIS I DID
FOR

ALL THIS I DID FOR THEE.

I CAME... because of "your" sin.

"As it is written, There is none righteous, no, not one." Romans 3:10

"For all have sinned, and come short of the glory of God;" Romans 3:23

"This is a faithful saying, and worthy of all acceptation, that Christ Jesus came into the world to save sinners;" I Timothy 1:15a

I DIED...to pay for "your" sin.

"But he was wounded for our transgressions, he was bruised for our inquities; the chastisement of our peace was upon him; and with his stripes we are healed." Isaiah 53:5

"But God commendeth his love toward us, in that, while we were yet sinners, Christ died for us. Much more then, being now justified by his blood, we shall be saved from wrath through him." Romans 5:8 & 9

"In whom we have redemption through his blood, even the forgiveness of sins:" Colossians 1:14

I AROSE...to keep "you" saved eternally.

"Wherefore he is able also to save them to the uttermost that come unto God by him, seeing he ever liveth to make intercession for them." Hebrews 7:25

"My sheep hear my voice, and I know them, and they follow me: And I give unto them eternal life; and they shall never perish, neither shall any man pluck them out of my hand." John 10:27 & 28

"And this is the record, that God hath given to us eternal life, and this life is in his Son."I John 5:11

YOU MUST REPENT...admitting you are guilty, that you cannot do "anything" to save or help save yourself, and that you need Jesus Christ.

"I tell you, Nay: but, except ye repent, ye shall all likewise perish." Luke 13:3

"Let the wicked forsake his way, and the unrighteous man his thoughts: and let him return unto the Lord, and he will

have mercy on him; and to our God, for he will abundantly pardon. For my thoughts are not your thoughts, neither are your ways my ways, saith the Lord." Isaiah 55:7 & 8.
"Not by works of righteousness which we have done, but according to his mercy he saved us," Titus 3:5a
"But to him that worketh not, but believeth on him that justifieth the ungodly, his faith is counted for righteousness." Romans 4:5

YOU MUST TRUST...putting your "complete" faith in Jesus Christ to save you.
"For God so loved the world, that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life." John 3:16
"He staggered not at the promise of God through unbelief; but was strong in faith, giving glory to God; And being fully persuaded that, what he had promised, he was able also to perform." Romans 4:20 & 21
"To declare, I say, at this time his righteousness: that he might be just, and the justifier of him which believeth in Jesus." Romans 3:26
"Therefore we conclude that a man is justified by faith without the deeds of the law." Romans 3:28

WHAT IS YOUR DECISION?

☐ **I CHOOSE TO TRUST JESUS AS MY SAVIOUR.**
"He that believeth on him is not condemned:" John 3:18a
"For with the heart man believeth unto righteousness; and with the mouth confession is made unto salvation." Romans 10:10
"For whosoever shall call upon the name of the Lord shall be saved." Romans 10:13

☐ **I CHOOSE TO REJECT JESUS AND KEEP MY WAY.**
"...but he that believeth not is condemned already, because he hath not believed in the name of the only begotten Son of God." John 3:18b

"And whosoever was not found written in the book of life was cast into the lake of fire." Revelation 20:15

Please send this tract to us to let us know that after reading it, you have decided to trust Jesus Christ as your Saviour.

Name_____
Address_____
City_____Zip_____
State_____Age_____

Fellowship Tract League
P.O. Box 164 LEBANON, OH 45036 U.S.A.
ALL TRACTS FREE, AS THE LORD PROVIDES.
Tract No. 103

Supreme Court, U.S.
FILED
APR 10 1991
OFFICE OF THE CLERK

(2)

No. 90-1443

In The

Supreme Court of the United States

October Term, 1990

HERBERT C. SAVAGE,

Petitioner,

vs.

TRAMMELL CROW COMPANY, INC. AND HERITAGE SECURITY SERVICES, INC.,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California Fourth District, Division One

BRIEF FOR RESPONDENTS IN OPPOSITION

ROBERT M. GANS, Esq.
GANS & BLACKMAR, A.P.C.
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Counsel of Record for Respondents Trammell Crow Company and Heritage Security Systems

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

(6)

QUESTIONS PRESENTED

This case does not involve Petitioner's First Amendment rights under the United States Constitution, as the Petition suggests, but rather Petitioner's free speech and petition rights under Article I, Section 2(a) of the California Constitution. The questions presented are:

1.-2. May a privately owned shopping center ban leafletting in the center's parking lot, where the ban is found to be consistently applied, content neutral and narrowly tailored to protect the center's interests?

3.-5. Must a trial court judge be disqualified because he is a member of the Roman Catholic Church?

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OPINIONS BELOW

The Opinion of the Court of Appeal of the State of California, Fourth district, Division One is reported at 223 Cal.App.3d 1562, with the Modification of Opinion reported at 224 Cal.App.3d 1637a. These are set forth in Appendices A and B of the Petition. The California Supreme Court's en banc denial of the Petition for Review is set forth in Appendix D of the Petition. The orders of the Superior Court of California, County of San Diego, are not reported but are set forth in Appendices E, F and G to the Petition.

JURISDICTION

Respondents contest that jurisdiction of this Court is appropriate under 28 U.S.C. §1257 since the Petition does not seek review of a final judgment or decree and does not raise a substantial Federal Question. (See "Reasons for Denying the Writ", Sections 1 and 3.)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

California Constitution. Article I, Section 2(a).

California Statutes. Code of Civil Procedure Section 170.2.

These provisions are set forth in Appendix H to the Petition.

STATEMENT OF THE CASE

Respondents manage Del Norte Plaza, a privately owned and operated shopping center located in Escondido, California.[1] Del Norte Plaza was privately developed, without any financial assistance from any governmental entities.

Del Norte Plaza is not a major regional mall, but is a small to mid-size center with a gross leasable area of approximately 215,000 square feet. It is situated upon approximately 18.5 acres. Del Norte Plaza's major tenants include a supermarket, drug store, movie theater, dime stores, several restaurants, and 40 smaller retail shops. Automobile parking facilities make up the balance of the shopping center.

The parking facilities of Del Norte Plaza are typical of small centers. Trash containers are located in walkways adjacent to stores but are not located on the parking facilities.

Del Norte Plaza adopted and has consistently enforced certain "Rules and Regulations Relating to the Use of Shopping Center Property for Purposes of Political Expression" (hereafter "Rules"). The Rules provide, and have been *uniformly enforced*, to prohibit the distribution

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[1] Respondent TRAMMELL CROW COMPANY (improperly designated by Petitioner as TRAMMELL CROW COMPANY, INC.) is the dba of Crow San Diego Asset Management Company; Respondent HERITAGE SECURITY SERVICES (improperly designated by Petitioner as HERITAGE SECURITY SERVICES, INC.) is the dba of RICHMAN MANAGEMENT CORPORATION, a California corporation.

of all leaflets, flyers and handbills *in the parking lot*, regardless of the nature or content of the leaflets.

The California Court of Appeal Opinion emphasized facts in the record that demonstrated that Respondents had consistently enforced this reasonable regulation to minimize littering (as there are no trash containers in the parking lot), to preclude undue interference with ingress and egress to the center, to avoid interruptions to automobile traffic patterns (particularly if several individuals were distributing leaflets), to prevent inconvenience to the center's patrons, and to preclude the potential increase in occurrence of traffic accidents on the property. The record further demonstrated that the regulation previously had been enforced by Respondents to compel *a tenant* of the shopping center to stop distributing leaflets, *related to the purposes of the shopping center*, in the parking lot.[2]

On May 25, 1989, Petitioner entered onto Del Norte Plaza and commenced distributing leaflets in the parking lot without seeking permission from Respondents. Petitioner was handling leaflets to people sitting in their cars and placing them on cars if the cars were unoccupied. Petitioner was stopped by Respondents' security guard and subsequently told by Respondents' property manager that he would not be permitted to distribute leaflets in the shopping center parking lot.

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[2] The Court of Appeal also noted facts in the record which indicated that the Rules did not purport to prohibit leafletting, by any person or entity, on the shopping center sidewalks.

Thereafter, on June 2, 1989, Petitioner sought mandatory injunctive relief to preclude Respondents from interfering with Petitioner's distribution of leaflets in the parking lot of the private shopping center.

The trial court denied Petitioner's request for a Temporary Restraining Order, and after a hearing on Petitioner's Order to Show Cause for Preliminary Injunction, issued an Order Denying Preliminary Injunction.

In the interim, Respondents demurred to the Complaint. The trial court sustained Respondents' Demurrer without leave to amend and dismissed Petitioner's Complaint in its entirety.

The Court of Appeal affirmed the trial court's Order Denying Preliminary Injunction but reversed the Order sustaining the Demurrer without leave to amend and dismissing the Complaint.

The California Supreme Court declined to review the Court of Appeal's decision.

REASONS WHY THE PETITION SHOULD BE DENIED

1. The Decisions of the Courts Below Involved a Determination of Petitioner's Free Speech and Petition Rights Under Article I, Section 2(a) of the California Constitution, and Not Petitioner's First Amendment Rights; Therefore, the Petition Fails to Raise a Substantial Federal Question.

In *Lloyd Corp. v. Tanner*, 407 U.S. 551, 33 L.Ed.2d 131, 92 S.Ct. 2219 (1972), this Court ruled that a privately owned and operated shopping center may uniformly ban the distribution of handbills on the center's property. In

so ruling, this Court rejected the argument that because a shopping center was "open to the public," the First Amendment of the United States Constitution prevents a private owner from enforcing a prohibition of handbilling. *Id.*, at 564.

In *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 64 L.Ed.2d, 741, 100 S.Ct. 2035 (1980), the Court reaffirmed its holding in *Lloyd* regarding the scope of the First Amendment. However, the Court further held that *Lloyd* did not preclude California from adopting and interpreting its own Constitution so as to grant individual liberties more expansive than those under the United States Constitution. This included a provision of the California Constitution which the California Supreme Court had held protects certain free speech and petition rights of California citizens, even when those rights are exercised in a privately owned shopping center.

The instant case involves the exercise of Petitioner's free speech and petitioning rights created *by the California Constitution*. As the two cases of this Court cited above make clear, the First Amendment to the United States Constitution does not provide Petitioner with any right to engage in leafletting activity on Respondents' private property. Accordingly, presentation of a substantial Federal Question, a basic prerequisite for jurisdiction under 28 U.S.C. § 1257, is lacking.[3]

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[3] Petitioner relies heavily upon *Carreras v. City of Anaheim* (9th Cir. 1985) 768 F.2d 1039, to support his contention that he has been denied free speech rights that are afforded to others in California. However, *Carreras* was based on the Ninth

(Continued on following page)

2. The Decisions of the Courts Below are Consistent With This Court's Holding in *Pruneyard v. Robins* and Reconsideration of That Decision is Unwarranted.

As noted above, *Pruneyard Shopping Center v. Robins* rejected a shopping center owner's argument that *Lloyd Corp. v. Tanner* prevents California from requiring a private shopping center owner to provide access to persons exercising state constitutional rights of free speech and petition. 447 U.S. at 80-81. In reaching this conclusion, however, this Court emphasized that under Article I, Section 2(a) of the California Constitution, the shopping center owner "may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions." *Id.*, at 83.

In the instant case, the California Court of Appeal determined, after detailed inquiry into the record, that Respondents' content neutral and narrowly drawn ban on activities such as Petitioner's constituted a valid time, place and manner regulation under the California Constitution. (Pet. A12-A13.) Hence, the California Court of Appeal's decision is entirely consistent with this Court's

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(Continued from previous page)

Circuit's analysis and interpretation of the California Constitution and California law, and the court expressly held that there was no need to determine whether petitioner's claim in that action violated the Federal Constitution. *Id.*, at 1042-1043. Moreover, even if a federal constitutional issue existed in the instant case, *Carreras* reaffirms the doctrine that federal constitutional issues should be avoided if a case can be decided on state law grounds. *Id.* Since Petitioner's most expansive speech rights exist under the State Constitution, there is no need to address a Federal Question, if any exists.

holding in *Pruneyard v. Robins*. Moreover, any decision that would force Respondents to open up the parking lot to leafletting activity like Petitioner's would violate the rights afforded to Respondents under *Pruneyard v. Robins*.

3. Jurisdiction Is Lacking Under 28 U.S.C. § 1257 Since Petitioner Does Not Seek Review of a Final Judgment.

Procedurally, this case is in its preliminary stages. The California Court of Appeal has rendered an interlocutory ruling, which among things, allows Petitioner to try to amend his Complaint to allege a claim against Respondents.

The general rule is that, to be reviewable, the state court decision "must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market Street R. Co. v. Railroad Commission*, 324 U.S. 548, 551 (1945). In sum, an appealable judgment "should be final not only as to all the parties, but as to the whole subject matter and as to all causes of action involved." *Collins v. Miller*, 252 U.S. 364, 370 (1920).

Where a dismissal of a state civil law action has not been ordered, or where leave to amend or answer has been granted, the finality requirement has been found lacking. *McComb v. Commissioners*, 91 U.S. 1 (1876); *Missouri and Kansas R. Co. v. Oletha*, 222 U.S. 185 (1911).

While in the past few decades, the Court has made some significant departures from the literal and traditional concepts of finality, those exceptions are not applicable to the instant case. See, e.g., *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541 (1949); *Mercantile National Bank v. Langdeau*, 371 U.S. 555, 557-58 (1963); *Construction Laborers v. Curry*, 371 U.S. 542, 548-52 (1963); *Cox Broadcasting Corporation v. Cohen*, 420 U.S. 669, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975). These authorities essentially reconstruct 28 U.S.C. § 1257 so as not to deny finality where further proceedings are either: (1) meaningless, insofar as preserving Federal Questions are concerned; or (2) present a real danger of some irreparable injury to federal policies or constitutional concerns.

Neither factor is present in the instant case since: (1) no substantial Federal Question is raised by the lower court's decision; and (2) further proceedings are not meaningless, since they may very well result in a substantial change to the nature of the claims, evidence and defenses.

Accordingly, the finality requirement of 28 U.S.C. § 1257 has not been satisfied and jurisdiction is lacking in the instant case.

4. The Challenged Decisions Below are Clearly Correct.

The fundamental issue presented and addressed by the California courts in this matter was whether Respondents' uniformly enforced ban on Petitioner's parking lot leafletting activity is a valid time, place and manner

regulation of activity otherwise protected under *the California Constitution*. The particular facts of this case concerned the application of a specific ban on specific activities (Petitioner's distribution of leaflets in the parking lot) at a specific location (Respondents' private property.) The decision denying Petitioner's request for an injunction was the result of the California courts engaging in an inquiry into, and determination of, factual showings made by the parties. (See, e.g., A5-A6, A9-A11.)

Petitioner's "Questions Presented" twists this issue in two significant regards.

First, Petitioner cites authority concerning leafletting activity in governmentally controlled forums that are substantially different in character and purpose from Respondents' shopping center parking lot – e.g., public stadiums and convention centers, state prisons, train stations, and public airports. See, e.g., *Carreras v. City of Anaheim*, 768 F.2d 1039, 1041-1042 (9th Cir. 1985); *Prisoner's Union v. California Department of Corrections*, 135 Cal.App.3d 930, 185 Cal.Rptr. 634 (1982); *In re Hoffman*, 67 Cal.2d 845, 64 Cal.Rtpr. 97 (1967).

Petitioner ignores the fact that Respondents' shopping center is privately funded, owned and managed; simply put, it is private property. Accordingly, Respondents have "important rights of substance; those rights are identified as freedom from disruption of normal business operations and freedom from interference with customer convenience." *H-CHH Associates v. Citizens for Representative Government*, 193 Cal.App.3d 1193, 1200 (1987). Respondents' *parking lot* is *not* a public forum.

Petitioner erroneously concludes that simply because leafletting has been permitted under the facts and circumstances of those cases involving established public forums, that he has automatic rights to exercise similar leafletting activities in Petitioner's privately-owned parking lot, without regard to Respondents' time, place and manner regulations. Petitioner overlooks the reality that time, place and manner regulations on protected speech activity may be invalid under the facts and circumstances of one case involving one forum, yet be entirely valid under other circumstances at other public, quasi-public or private forums. See, e.g., *Heffron v. Int'l. Soc. for Krishna Consc.*, 462 U.S. 640, 652-653, 69 L.Ed.2d 298, 101 S.Ct. 2559 (1981).

This leads to Petitioner's second flaw. Petitioner claims that there was "no evidence" supporting the lower courts' determination that the time, place and manner regulations in the instant case were reasonable. As noted above, this is belied by the Court of Appeal's detailed inquiry into the factual showings made by the parties, as well as its determination that Respondents' parking lot leafletting ban has been uniformly applied and is "content free."[4]

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[4] Question Presented No. 1 in the Petition would seem to suggest that there was some evidence in the record that other parties were allowed to engage in leafletting in Respondents' parking lot. In fact, the courts below found no such evidence.

5. The California Courts Correctly Decided That the Trial Court Judge Need Not be Disqualified.

In view of the fact that Questions Presented 3.-5. clearly do not warrant review by this Court, Respondents will not brief them. However, Respondents request leave to file a brief on these Questions Presented, if the Court wishes to see one.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
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No. 90-1443

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

HERBERT C. SAVAGE

Petitioner,

vs.

TRAMMELL CROW COMPANY, INC.
AND
HERITAGE SECURITY SERVICES, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF THE STATE OF
CALIFORNIA
FOURTH DISTRICT, DIVISION ONE

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

HERBERT C. SAVAGE in pro. per.
for Petitioner
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San Diego, California 92112
(Telephone: None)

QUESTIONS PRESENTED

This case does not involve the questions erroneously presented by Respondent but are correctly stated as follows:

1. May Gospel tract distribution be barred from parking lots open to the public when others are not denied that First Amendment right?

2. May the court in the instant case bar First Amendment rights with no evidence of interference?

3. May the California courts invoke a religious exemption under California Code of Civil Procedure section 170.2 (a) to deny recusal and rehearing before an impartial judge, when the alleged "religious group" is a foreign state, a political body?

4. Do the United States treaties in force cited *infra*, require recognition of the "Holy See" as a political body, a state?

5. Which prevails over the other, California Code of Civil Procedure section 170.2(a), or Article VI of the United States Constitution?

No. 90-1443

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1990

HERBERT C. SAVAGE
Petitioner,
vs.
TRAMMELL CROW COMPANY, INC.
and
HERITAGE SECURITY SERVICES, INC.
Respondents.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Respondent, Trammell, in its opposing brief No. 90-1443, rewrites the three part decision of the Court of Appeal of the State of California, Fourth District, Division One, printed in Appendices A, B, & C of the Petition, as being a state law decision!

Part I of the decision in *Savage* to bar Gospel tract distribution from the shopping center parking lot (petition Appendix A, pp. A5-A13) contains no less than seven citations of *Ward v. Rock Against Racism* __U.S.__ 109 S.Ct. 2746, (1989) (loud music disturbing residents adjacent to a **public park in New York**), as authority for barring Gospel tract distribution in the shopping center parking lot (see Petition Appendix A, pp. A9-A12).

The following federal cases are also relied on as authorities in the decision Part I (at Petition Appendix A, pp. A9-A12):

Clark V. Community for Creative Non-Violence
468 U.S. 288 (1984)

Heffron v. International Society for Krishna Consciousness, Inc.
452 U.S. 640 (1981)

Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc.
425 U.S. 748 (1976)

United States v. Albertini
472 U.S. 675 (1985)

Frisby v. Schultz
487 U.S. 474 (1988)

Renton v. Playtime Theatres, Inc.
475 U.S. 41 (1986)

Prior to the seven *federal* authorities cited on the decision, the Court of Appeals preceded these authorities with the statement:

> [R]estrictions on such activity is nonetheless measured by *federal* constitutional standards.
> (See Petition Appendix A, p. A8)
> [emphasis added]

The Court states clearly in its decision Part I (Petition Appendix A, p. A8) that the basis of the decision is measured by federal constitutional standards and cites seven federal authoritites and the First Amendment [1] to the United States Constitution as authority.

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[1] Statutes, Rules, and Treaties involved printed at Petition Appendix H. First Amendment printed at Petition Appendix H, p. H2.

The transparent revision of the decision by Respondent Trammell of the decision Part I which denies distribution of The Gospel in the shopping center parking lot, reflects Respondent's reluctance to read the decisions Parts I & III of the *three* part decision for what they actually are! Pretending that decisions Parts I & III are interlocutory is nonsense! Access to the shopping center parking lot is denied to The Gospel of The Lord Jesus Christ by the Court's decision, Part I. Rehearing before an impartial judge is denied by the Court's decision, Part III.

IDENTIFICATION OF RESPONDENTS

With reference to the contested identification of repsondents in Opposition p. 2, fn 1, the following declaration under penalty of perjury was made by Ron Burns on behalf of the respondents:

> "8. In November, 1988 **Trammell Crow Company** retained **Hertiage Security Services, Inc**. to provide security for the plaza.
>
> . . .
>
> **I declare under penalty of perjury that the foregoing is true and correct** and that this Declaration was executed by me this 6/15/89 day of June, 1989, in San Diego, California.
> ss Ron Burns"

See pages 4 & 7 of Declaration of Ron Burns In Opposition To Motion For Preliminary Injunction attached to Memorandum of Points And Authorities in Opposition to Motion For Preliminary Injunction **filed in the Superior**

Court of California, County of San Diego, June 16, 1989 by Robert M. Gans, Attorney for Defendants, and is part of the record below.

CONCLUSION

Review of the desicion for discriminatory denial of the right of free speech to a distributor of The word of God, *but not others*, and denial of the right of hearing before an impartial judge, is important, substantial, and by no means premature! Any further action in the lower courts can have no relevance in these decisions extant in Part I and Part III of the decision.

In light of Respondent Trammell's inability to face the issues presented in the Petition without gross distortion of the *Savage* decision in Part I, and the complete inability to face the issues presented in the *Savage* decision Part III, ie: the denial of rehearing before an impartial judge, the need for plenary review is indisputable. Petitioner suggests summary reversal in the alternative.

Respectfully Submitted

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"THAT THE WORD OF THE LORD MAY HAVE FREE COURSE, AND BE GLORIFIED."

Holy Bible: II Thessalonians 3:1(b)